IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1815

JAMES C. GABRIEL, *Pro Se*, a Class B Equity Bearing Common Stockholder in the Missouri Pacific Railroad Company, for Himself,

Plaintiff-Appellant, Pro Se,

—v.—

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants-Appellees,

MISSOURI PACIFIC RAILROAD COMPANY,

Intervening Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY
(THREE-JUDGE COURT)

JURISDICTIONAL STATEMENT

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No. 75-.....

JAMES C. GABRIEL, *Pro Se,* a Class B Equity Bearing Common Stockholder in the Missouri Pacific Railroad Company, for Himself,

Plaintiff-Appellant, Pro Se,

—v.—

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants-Appellees,

MISSOURI PACIFIC RAILROAD COMPANY,

Intervening Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY
(THREE-JUDGE COURT)

JURISDICTIONAL STATEMENT

Appellant Gabriel, Pro Se, appeals from the Letter Opinion of March 1, 1976 and Order dated March 17, 1976 of the United States District Court, District of New Jersey, Three Judge Court, denying my motion, without costs, to Require Joinder of the Internal Revenue Service under Rule 19 of the Rules of Civil Procedure, with my affidavit to back up

the motion, entered on January 27, 1976—Joinder of Persons needed for just adjudication in order to join the Internal Revenue Service as a party plaintiff with Appellant Gabriel in the above Captioned Case in the above District Court of New Jersey, Civil Action #74-471, in order that the I.R.S. become enabled to collect over $100,000,000 in Capital Gains Taxes on $800,000,000 Taxable Income, so that the Internal Revenue Service becomes enabled to use its law expertise to win a Federal Court Order through Court procedure ordering the Interstate Commerce Commission to have my Missouri Pacific Railroad Class B equity bearing Common Stocks evaluated under due process of law according to the MoPac I.C.C. "Agreed System Plan" of Reorganization or Charter of 1954-1955, 290 I.C.C. 477, and according to my Constitutional Rights under the 5th Amendment—"No person shall be • • • deprived of life, liberty or property, without due process of law; • • • ," and according to the 14th Amendment, Section 1, line 2, "No state shall • • • deny to any person within its jurisdiction the equal protection of the laws; and according to Article 1, Section 9—"No bill of attainder or ex post facto law, or law impairing the obligation of contracts, • • •."

The U. S. Internal Revenue Service has the law expertise to help win a U. S. District Court Order by the Federal Court, ordering the Interstate Commerce Commission to get a due process of law evaluation of my Missouri Pacific Railroad Class B equity bearing Common stocks according to the "Agreed System Plan" of Reorganization of 1954-1955 MoPac Charter 290 I.C.C. 477 which will give each Class B equity bearing Common stocks a value of over $22,500 per Class B based upon 12/31/72 Retained Income of $349,192,000, and consolidated nondepreciable properties,

including land and land rights of approximately $545,000-000, or a total of $894,000,000 for 39,731 shares of Class B, instead of the $97 million or $2,450 value per share given to Class B as "Fair Value" by the I.C.C. This additional $800 million value will net the I.R.S. over $100,000,000 in capital gains taxes, $62 million taxes coming from Mississippi River Corp.

Mississippi River Corporation will have to pay over $62 million in I.R.S. Capital Gains Taxes because Mississippi owns 62% of Class A $5 preferred $100 value stocks which according to this "Plan of Recapitalization" of 1973 benefits over $400,000,000 in values which have been transferred to its Class A $5 pfd $100 per share value stocks from the Class B equity bearing Common stocks without having paid any taxes to the I.R.S.

Appellant Gabriel, Pro Se, respectfully submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial question is presented for Requiring Joinder of the United States Internal Revenue Service under Rule 19 of the Rules of Civil Procedure so as to enable the I.R.S. to collect over $100 million in Capital Gains Taxes that have not been collected, especially over $62,000,000 in Capital Gains Taxes owed to the I.R.S. by Mississippi River Corporation, which controls Missouri Pacific Railroad Company, an Intervening Defendant in the above Captioned Case.

Order and Opinion of the Three-Judge Court Below in the United States District Court, District of New Jersey

Appellant's Motion and Affidavit in support of the motion to join the Internal Revenue Service as a party plaintiff was opened to the Court by James C. Gabriel, Pro Se, dated January 27, 1976, to Require Joinder of the Internal Revenue Service under Rule 19 of the Rules of Civil Procedure, making the I.R.S. a party with Plaintiff on the above Civil Action.

The Three-Judge Court considered Appellant's Motion and Affidavit filed in support, as well as the Letter Memorandum in opposition to the Motion, and the Court filed a Letter Opinion on March 1, 1976, and on the 17th day of March, 1976, "Ordered that a motion for plaintiff to join the Internal Revenue Service as a party plaintiff herein be and the same hereby is Denied without Costs." See Exhibits A and B in Appendix.

Jurisdiction

The jurisdiction of the Supreme Court of the United States to hear this appeal rests upon 28 U.S.C. 1253.

This present Civil Action Motion by Plaintiff, Pro Se, to Require Joinder of the Internal Revenue Service, was filed on January 27, 1976 in the United States District Court, District of New Jersey, a Three-Judge Court, to Require Joinder under Rule 19 of the persons needed for just adjudication, in order to join the I.R.S. as a party plaintiff with appellant Gabriel in order that the Internal Revenue Service uses its law expertise so that it may

become enabled to collect Capital Gains Taxes of over $100,000,000 based upon the transfer of from $615 million to $797 million values without the payment of any capital gains taxes to the I.R.S. on this transfer of property and retained values. These values were transferred from the Class B equity bearing Common stocks to the Class A $5 preferred $100 value stocks, which later were converted into MoPac equity common without any due process evaluation of Class B.

Plaintiff's Motion to Require Joinder of the Internal Revenue Service was denied by the Three-Judge Court order without costs on March 17, 1976, without Hon. Judges' signatures affixed on the Order, only an S,S,S. See Exhibit C. Plaintiff made an affidavit dated and Filed March 22, 1976 to the Honorable Court to have the Hon. Three Judges, Hon. James Hunter III, Hon. Lawrence A. Whipple and Hon. Clarkson S. Fisher sign this Order so that Plaintiff, Pro Se, may become enabled to make a Notice of Appeal to the Supreme Court of the United States to appeal the lower Court Order denying Joinder of the I.R.S. under Rule 19. See Exhibit D. Plaintiff received no reply from the Court. Plaintiff made another Affidavit which Plaintiff personally filed at the above Court on April 22, 1976 and took one Filed copy to Hon. Judge Fisher's Chambers. See Exhibit E. Judge Fisher's secretary telephoned the Court Clerk for the above Court Order of March 19, 1976 and the secretary was told it was in the Clerk's office. Plaintiff went to the Clerk's office and got a copy of the Order on Civil Action #74-469 for a fee of 50 cents. Now with the signatures of the 3 Hon. Judges, see Exhibit G, Plaintiff immediately made a Notice of Appeal to the Supreme Court of the United States and took it by hand with enough copies to the Clerk of the Court, which was served to all concerned—appealing for my mo-

tion dated January 27, 1976 to Require Joinder of the I.R.S. to enable it to collect over $100,000,000 capital gains taxes, $62 million coming from Mississippi. (See Exhibit "H".)

Jurisdiction of this appeal is conferred by 28 U.S.C. Section 1253.

The following cases sustain the jurisdiction of this Court: *Reynolds* v. *Sims*. 377 U.S. 533 (1964); *Baker* v. *Carr*, 369 U.S. 186 (1962); and especially *United States* v. *Crescent Amusements Co.*, 323 U.S. 173 (1944). *But see, Bailey* v. *Patterson*, 369 U.S. 31 (1962); *Turner* v. *City of Memphis*, 369 U.S. 350 (1962); *Phillips* v. *United States*, 312 U.S. 246 (1941); and *William Jameson & Company* v. *Morgenthau*, 307 U.S. 171 (1939).

This Civil Action was instituted originally in the United States District Court, District of New Jersey, original Complaint Filed April 3, 1974 for Review of Administrative Action of the Interstate Commerce Commission Finance Docket #27346, with Amended Complaint to Supplement original Complaint filed May 7, 1974, the entire Interstate Commerce Commission to stand up and enforce their own laws which is The MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955, for a due process of law evaluation of my Class B Common, by giving the true real value for Plaintiff's Class B stocks—value for value surrendered for the new MoPac Common which is I.C.C.'s own laws.

Jurisdiction was instituted pursuant to the provisions of U.S. Code Title 28, Sections 1326, 1398, 2284, 2321, 2325, 2401, and Title 5 Section 1009 which confers jurisdiction upon the Three-Judge Court of the U.S. District Court.

Joinder of the I.R.S. under Rule 19 of the Rules of Civil Procedure must be ruled favorably by this Court to get a due process of law evaluation Order by the lower Court to the I.C.C. by the use of I.R.S. law expertise to that effect, so that the I.R.S. may become enabled to collect over $100 million in I.R.S. Capital Gains Taxes.

Plaintiff, Pro Se, as a Class B equity bearing Class B Common stockholder is being hurt over $20,000 per Class B because the Court below does not rule that Plaintiff's Class B should be Ordered evaluated by the I.C.C. under due process of law to find its real true value so that the I.R.S. can also collect the Capital Gains Taxes due to it.

MoPac is controlled by the Mississippi River Corp. Mississippi River Corp. bought up the Class B equity shares from Alleghany at their "Settlement Agreement" as of December 18, 1972, by and between Alleghany, MoPac and Mississippi River Corp. at $2,450 value per Class B. Mississippi is behind this so-called "Plan of Recapitalization." This takeover of other peoples' property of Class B equity shares without just compensation and due process of law evaluation has been done by calling this takeover a "Plan of Recapitalization" under Section 20a of the Interstate Commerce Act. This 20a was passed by Congress in 1920 to prevent fraud against the railroad investing public, to have the I.C.C. act as policeman to prevent fraud against the railroad investing public. But 20a is being used by the I.C.C. and MoPac to take away my Class B property without just compensation or due process evaluation by transferring the values of my Class B equity shares to the Class A $5 preferred $100 value stocks. Mississippi which controls 62% of the Class A $5 preferred has profited by this transfer to its preferred of over $400,000,000 in Retained Income and Property values. Mississippi paid no taxes on

this transfer, at the same time its preferred becoming converted into an equity bearing Common, without a due process evaluation of Class B to give value for value in exchange. That is why the I.R.S. must be joined into this case by Rule 19.

This was the idea concocted by Mississippi which is behind this "Plan of Recapitalization" under 20a, to pay only $2,450 per Class B, which has a value of over $22,500 per share, without a due process, by having Commission Division 3 say in its decision of the MoPac Case, Finance Docket #27346, on December 6, 1973 that "Moreover, the Commission's jurisdiction under 20a is plenary and exclusive and independent of any other Federal Authority. *Schwabacher* v. *United States, supra,* at 197. Since the matter involved in this proceeding comes within the purview of Section 20a, our jurisdiction in the proceeding is supreme * * *." This is the way Mississippi River Corporation transfers to its 62% holdings of Class A $5 preferred stocks over $400,000,000 in values of other people's property without paying for this $400,000,000 property, and at the same time Mississippi is paying no Capital Gains Taxes on this notorious takeover, which amounts to over $62 million in capital gains taxes that Miss. owes the I.R.S. That is why Mississippi is spending so much for fees to prevent me and others from having Class B evaluated under due process by a Court Order to the I.C.C. It is only by this Honorable Supreme Court of the U.S. ruling that the Internal Revenue Service can come into this MoPac Case under Rule 19 to become enabled to use its expertise in law to get a Federal Court Order for a due process of law evaluation of Class B equity shares so that the I.R.S. will become enabled to collect the $100,000,000 in Capital

Gains Taxes coming to it by this "Plan of Recapitalization", especially the $62,000,000 owed by Mississippi River Corp. The I.R.S. will then have brought a solution to this MoPac case by first getting a Court order for a due process of law evaluation to the I.C.C. MoPac Class B, as of Dec. 31, 1972, has a Retained Income of $349,192,000 that belongs to Class B equity shares in MoPac, which with the $545 million in consolidated nondepreciable MoPac properties including land and land mineral rights, amounts to a total of $894 million, which when divided by 39,731 Class B shares comes to about $22,500 per Class B. Mississippi is trying to get all Class B shares, including my own, at $2,450 value per share or a total of about $97 million. There is a difference of between $615 million to $797 million in favor of Class A $5 pfd., and the reason why Mississippi River Corp. is fighting so hard to prevent due process evaluation of Class B. That is the reason why this Honorable Supreme Court should rule to allow the I.R.S. enter this case, under Rule 19.

Plaintiff's Jurisdictional Rights are based upon the Constitution and laws of the United States.

A due process of law evaluation of his Class B is Plaintiff-Appellant's rights under the 5th Amendment. According to the 14th Amendment Section 1, line 2, it is stated as follows: "No state shall deny to any person within its jurisdiction the equal protection of the laws." Plaintiff-Appellant is not being accorded the equal protection of the laws, he is not being given the right by the Federal Court below which is not Ordering the I.C.C. to a due process of law evaluation of his Class B equity shares according to the "Agreed System Plan" of 1954-1955, 290 I.C.C. 477, to get Class B real and true value so that the I.R.S. may

become enabled to collect the over $100 million Capital Gains taxes owed to it through a due process of law evaluation. In addition, according to Article 1, Section 9—"No bill of attainder or ex post facto law shall be passed." Section 20a is ex post facto law that is being enforced to overcome the MoPac "Agreed System Plan" of 1954-1955, 290 I.C.C. 477, which is a law of the United States as of 1955. Section 10 states: "No state shall * * * pass any * * * ex post facto law, or law impairing the obligations of contracts, * * *." The "Agreed System Plan" of 1954-1955 or MoPac Charter, 290 I.C.C. 477, is the contract made in 1955 both by the Interstate Commerce Commission and the U.S. Federal District Court in Saint Louis, Eastern Division, Eastern Judicial District of Missouri. This "Agreed System Plan" is a contract and it is a law of the United States and it must be enforced by a due process evaluation of Class B. Alleghany, MoPac and Mississippi River Corp. are trying to impair this "Agreed System Plan" contract by using Section 20a of the Act with which to take over other peoples' property without due process evaluation. These companies are trying to compel me by court action and by the I.C.C. 20a action to give up my Class B equity bearing MoPac stocks and to accept an arbitrary value of $2,450 per Class B equity share without any right to a due process of law evaluation of my Class B shares which due process would give my Class B about 10 times more value than I am being offered by Mississippi River Corp. The opposition is trying to include into this "Plan of Recapitalization" this Plaintiff-Appellant who is a dissenter who voted against this "Plan" and who is fighting for his Constitutional rights to have a due process evaluation of his B equity bearing Common Shares, because $2,450 value per Class B equity shares is arbitrary and too low a value

for each Class B, the $2,450 value per share being for "Settlement Agreement" purposes only. This $2,450 figure had not been arrived at by a due process of law evaluation according to the I.C.C. MoPac "Agreed System Plan" of Reorganization of 1954-1955, 290 I.C.C. 477. This is the due process that I am asking for. The reason why Plaintiff is appealing for his Motion of January 27, 1976 to Require Joinder of the I.R.S. with Plaintiff into this case is to enable the I.R.S. collect over $100 million in capital gains taxes, $62 million of these taxes coming from Mississippi River Corporation which has benefited over $400 million in values transferred to its Class A $5 preferred stocks. This Honorable Court must respectfully allow the I.R.S. to join with Plaintiff-Appellant under Rule 19 to help evaluate Class B equity shares under due process of law.

Questions Presented

1. How could the United States District Court, District of New Jersey, Three-Judge Court panel allow between $615 million and $797 million values be transferred from the Class B equity bearing common stocks to the Class A $5 preferred $100 value stocks and then allow the preferred to be converted into an equity bearing common stock (1) without a due process of law evaluation of both the Class B equity bearing common stocks and the Class A $5 preferred in a "Plan of Recapitalization," (2) wtihout the payment of capital gains taxes to the Internal Revenue Service of over $100,000,000 in taxes for these huge transfers of values? Isn't this reason enough why Plaintiff-Appellant has made a Motion and Affidavit to Require Joinder of the Internal Revenue Service under Rule 19 to become party with Appellant, to have the I.R.S. use their law expertise

to get a Court Order to the I.C.C. to evaluate Class B under due process of law so the I.R.S. could become enabled to collect the capital gains taxes coming to it, especially the $62 million in capital gains coming from Mississippi River Corporation?

2. How could an Assistant United States Attorney be permitted by the Three-Judge Court to quash Plaintiff's motion to join the Internal Revenue Service under Rule 19 as a party with Plaintiff to help the I.R.S. in collecting over $100 million in capital gains taxes by using its law expertise with which to win a lower Court Order to have the Interstate Commerce Commission evaluate Class B equity stocks, and Class A $5 pfd. under due process of law to find their real true values according to the "Agreed System Plan" of 1954-1955, 290 I.C.C. 477? Only then will Plaintiff-Appellant get the real true value for his Class B in a fair exchange for value for the new common of recapitalization when the I.R.S. joins with Plaintiff under Rule 19?

Answers to Questions Presented

1. There is no dispute that the transfer of between $615 million and $797 million in values from the Class B equity common stocks to the Class A $5 preferred $100 value stocks in a "Plan of Recapitalization" without a due process of law evaluation is against the 5th Amendment. It is also against the 14th Amendment, Section 1, due process of law and the equal protection of the laws. It is also against Article 1, Section 9—no ex post facto law shall be passed. Article 10—"No state shall • • • pass any law impairing the obligation of contracts." The "Agreed System Plan" of Reorganization is the contract—290 I.C.C.

477, which the "Plan of Recapitalization" is impairing, with the use of Section 20a to destroy a due process of law evaluation for Class B to find the values of B equity bearing common shares for the benefit of the I.R.S. Because the lower Court denies Joinder of the Internal Revenue Service under Rule 19, it is a must for the sake of justice, and for the sake of the rights of the U.S. Government I.R.S. to have the Supreme Court of the U.S. to rule in favor of allowing the I.R.S. to enter into this milestone case for justice sake. The I.R.S. must become enabled to collect at least the $62 million capital gains taxes owed by Mississippi River Corp. To do otherwise would be against the 14th Amendment equal protection of the laws—large corporate powerful structure should be taxed equally with small people.

2. The Honorable Supreme Court must respectfully require joinder under Rule 19 to enable the I.R.S. to collect capital gains taxes coming to it. The Assistant U.S. Attorney having quashed the motion to join the I.R.S. under-Rule 19 it is now respectfully the constitutional duty of the Supreme Court to rule to require joinder of the I.R.S. under Rule 19 to save the day for law, order, and justice under the Constitution of the United States.

Statement of the Case

The MoPac Class B original suit was commenced by *Betty Levin* v. *Mississippi River Corp.* in 1967 for better dividends for MoPac Class B equity bearing common stockholders. It was later made into a class action by Hon. Frederick vPelt Ryan, U.S.D.J., Southern District of New York, on October 9, 1968 in regard to dividends; that Class B stockholders were not getting enough dividends on their

Class B. No intervenors were permitted after December 20, 1968. 67 Civ. 5059.

On December 18, 1972, a "Settlement Agreement" was made "dated as of December 18, 1972 by and between Alleghany Corporation, MoPac and Mississippi River Corporation," to sell to Mississippi River Corp. all of the 53% holdings of Alleghany's Class B equity MoPac shares at $2,450 value per Class B, or for about $97 million for the entire 39,731 shares of Class B. This price was so cheap that Mississippi wanted all the Class B at that price and used the Section 20a of the Interstate Commerce Act for a "Plan of Recapitalization" to take the Class B shares at a fixed price and convert all of her 62% Class A $5 preferred $100 value shares into new equity bearing common based upon value of $2,450 per Class B without a due process of law evaluation to find Class B real true value, which under due process is about $22,500 per Class B which is according to MoPac's Charter or "Agreed System Plan" of Reorganization of 1954-1955, 290 I.C.C. 477, which would give to the Class B equity common shares about $22,500 per share value made upon $349 million Retained Income and $545 million in property values as of December 31, 1972, or a total of about $894 million for the 39,731 Class B, all these values belonging to Class B in MoPac.

The "Plan of Recapitalization" called for the conversion of the 1,860,000 shares of Class A $5 pfd. into the new equity common by adding to the $5 pfd. over $615 million to $$797 million values by transferring these values from Class B and giving them to Class A $5 pfd., thereby increasing the Class A $5 pfd. $100 value stocks to a value of about $430 per share or over, with a new common stock equity status for the old $5 prd. This reduces the equity

value of Class B from 82½% to 24½% and increases the Class A value from 17½% to 75½%, or from $186 million for the 1,860,000 Class A $5 pfd. to about $801 million and reduces Class B to $97 million from $894 million. But this requires taxes to be paid amounting to over $100,000,000 in capital gains to the I.R.S. by Class A, the biggest holder being Mississippi River Corporation which benefits over $400 million. Taxes on this Mississippi take is over $62 million to I.R.S.

Alleghany Corporation was not really representative of the minority Class B holders as she was portrayed to be by the Weinfeld Court and by the I.C.C. Alleghany had a tax advantage in disposing of its Class B at an arbitrary low price value of $2,450 per share and it was pressured by the I.C.C. to dispose of its Class B in order to be allowed by the I.C.C. to remain as a motor carrier under I.C.C. jurisdiction because alleghany owns Jones Motor Co. and saves several million dollars annually in I.R.S. penalty taxes by remaining as a motor carrier under the I.C.C. jurisdiction. Besides, Alleghany controls Investors Diversified Services Inc., a $7 billion Investment Trust Complex and as a motor carrier Alleghany is not under the S.E.C. Federal law supervision in their investments. Some favoritism under the I.C.C. jurisdiction.

The older background facts are very important and essential for an understanding of this petition to allow the I.R.S. joinder under Rule 19 with Appellant Gabriel. Only the I.R.S. joinder can respectfully solve this MoPac case.

The Agreed System Plan of 1954 or Charter, 290 I.C.C. 477 is a law of the United States and must be enforced by the Federal courts to get Class B real and true value by

due process, because the "Agreed System Plan" was approved and certified both by the I.C.C. and the Federal District Court in St. Louis. Not to give Class B a due process of law evaluation is against the 5th Amendment, and Article 1, Section 10—No State shall make laws impairing the obligation of contracts. The MoPac Charter "Agreed System Plan" is a contract and Class B must be evaluated under due process of law.

Only the I.R.S. has the clout and the law expertise to solve this case by enforcing the law. The law is on the side of Class B shares and the law must be enforced for the sake of justice.

The Questions Are Substantial

The prior order dated March 17, 1976 of the Three-Judge Court below plainly violated this Plaintiff-Appellant's 5th Amendment Guarantees of Due Process of law, and the 14th Amendment Section 1, line 2, of due process, and equal protection of the laws. Little people like myself are not being treated equally before the law, the same way that large corporate structures like Mississippi, MoPac and Alleghany are being treated.

A Motion and affidavit to support the Motion was made by Plaintiff, Pro Se, filed January 27, 1976 to Require Joinder of the Internal Revenue Service, to become a party with Plaintiff, under Rule 19 of the Rules of Civil Procedure, in order that the I.R.S. with their law expertise becomes enabled to collect Capital Gains Taxes of over $100 million on the transfer of over $615 million in taxable values of Retained Income and Property Values from the Class B equity bearing Common shares to the Class A $5

preferred $100 value stocks of MoPac. MoPac and Mississippi are cleverly using Section 20a of the Act to help defraud both the I.R.S. out of many millions in Capital Gains Taxes and Appellant Class B equity stockholder out of over $ 20,000 pre Class B. If Plaintiff loses this case and there is no Court Order from this Court ordering the Interstate Commerce Commission to evaluate Class B under due process of law to get its real true higher values than the $2,450 per Class B that was for "Settlement" purposes only, the chances for the I.R.S. are lost forever to collect this over $100 million in taxes, especially the $62 million Capital Gains Taxes from Mississippi River. Therefore it is incombent upon this Honorable Court to Require Joinder of the I.R.S. to save those taxes to the Government.

Whoever heard of transferring between $615,000,000 and $797,000,000 values in Retained Income and Property values from the Class B equity bearing Common shares to the Class A $5 pfd $100 value stocks, and raise this value from $100 per share to over $430 per share, this pfd. now being converted into Common equity bearing shares, without the payment of any taxes on the over $615 million values transferred to the $5 Class A Pfd. Joinder of the I.R.S. under Rule 19 into this court case to use its law expertise to help win for its Government the taxes owed to it must respectfully be approved by this Honorable Supreme Court.

This plaintiff appellant does not have the ability in law to help win a decision in favor of a due process evaluation of Gabriel's Class B equity shares. Only the I.R.S. has the law expertise to win a due process of law evaluation of Class B so that the U.S. can collect the over $100 million owed to it.

CONCLUSION

Appellant is entitled to be heard in order to join the Internal Revenue Service to become a party with Plaintiff Appellant, to have the I.R.S. use their law expertise to stand up for the rights and interests of the U.S. Internal Revenue Service which has over $100 million in capital gains taxes coming to it in uncollected taxes due to the Government of the U. S. in the transfer of over $615,000,000 from the Class B equity Common shares and giving it all to the Class A $5 pfd. $100 value shares, 62% of Class A being owned by Mississippi River Corporation, the Company which is the architect of this whole scheme or so called "Plan of Recapitalization," the Company that benefits over $400 million in property and Retained Income values taken from the Class B equity Common shares without the payment of one red cent of the over $62,000,000 capital gains taxes it should pay to the U. S. Internal Revenue Service under a due process of law evaluation of Class B which will give Class B its real true value of over $22,500 per share. This is the reason why Plaintiff-Appellant needs the I.R.S. to join him under Rule 19 to use their law expertise to help win a due process of law evaluation of Class B.

By this Honorable Court obeying the Constitutional guarantees of the United States to this Appellant by ruling to require joinder of the I.R.S. under Rule 19 to join the I.R.S. with this Appellant to have I.R.S. use its law expertise to evaluate Class B, it will financially benefit the U. S. Internal Revenue Service many millions of dollars in Federal Capital Gains Taxes that will not otherwise be able to be collected by the I.R.S. if due process was not granted

by the Court. In addition, this ruling by this Honorable Court to rule in favor of joinder of the I.R.S. under Rule 19 will create much more respect for the rights and interests of the U. S. Internal Revenue Service. It will mean equal protection under the law where everyone is treated equally, equal, even with the large corporate structures. It will also help the public's regard for the Federal Court system. It will show and prove to the American public that it is not only the little man who carries the burden but that the big corporate structures are also made to toe the line of the law.

For the reasons stated above, please grant Petitioner to Require Joinder of the Internal Revenue Service under Rule 19 of the Rules of Civil Procedure.

Respectfully submitted,

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Plaintiff-Appellant
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APPENDIX

Letter Opinion of the District Court, District of New Jersey

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
TRENTON, N. J. 08605

CHAMBERS OF
CLARKSON S. FISHER
JUDGE

March 1, 1976

LETTER OPINION

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Leon Leighton, Esq.,
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Re: Gabriel v. U.S.A. et al., 74-471
Wesson v. U.S.A. et al., 74-469
Vaiani v. U.S.A. et al., 74-470

(Consolidated)

Gentlemen:

The court has received yet another motion by plaintiffs to join the Internal Revenue Service as a party plaintiff. This motion was made before and was denied. It is again denied after consultation with Judges Hunter and Whipple.

The Government will submit an order for signature by all three judges. All proceedings will now be closed pending the court's determination of the matter.

Very truly yours,

/s/ Clarkson S. Fisher,
Clarkson S. Fisher,
U.S.D.J.

CSF/efr
c.c. Hon. James Hunter III
Hon. Lawrence A. Whipple
Hanford O"Hara, Esq.

First Order of United States District Court, District of New Jersey

EXHIBIT B and C

RLR:kew
74 1380
74 1383
74 1384

UNITED STATES DISTRICT COURT

District of New Jersey

Civil Action 74-469

James C. Gabriel, *pro se, et al.*,

Plaintiffs,

—v.—

United States of America, *et al.*,

Defendants.

This matter, a motion to join the Internal Revenue Service as a party plaintiff, having been opened to the Court by James C. Gabriel and William R. Wesson, plaintiffs pro se, in the presence of Jonathan L. Goldstein, United States Attorney for the District of New Jersey, Ronald L. Reisner, Assistant United States Attorney appearing, Fritz R. Kuhn, General Counsel for the Interstate Commerce Commission, Harold O'Hara, Esquire appearing, Leon Leighton, Esquire appearing and John Charles Vaiani plaintiff pro se appearing, and the Court having considered the motion and the documents filed in support thereof as

well as the letter memorandum in opposition to the motion, and the Court having filed a letter opinion on March 1, 1976 and for good cause shown;

It is on this 17 day of March, 1976

ORDERED that the motion by plaintiff to join the Internal Revenue Service as a party plaintiff herein be and the same hereby is DENIED without costs.

S/ .....
JAMES HUNTER, III
United States Circuit Judge

S/ .....
LAWRENCE A. WHIPPLE
Chief, United States District Judge

S/ .....
CLARKSON S. FISHER
United States District Judge

ORIGINAL FILED
MAR 17 1970
ANGELO W. LOCASCIO
Clerk

Affidavit of James C. Gabriel
Dated March 20, 1976

EXHIBIT D

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Civil Action #74-471

JAMES C. GABRIEL, *Pro Se,*

Plaintiff,

—v.—

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
MISSOURI PACIFIC RAILROAD COMPANY,

Intervening Defendant.

Regarding Order of U.S.D. Court. *Affidavit* in regards to the Order of March 17, 1976, whereby it is Ordered that the Motion by Plaintiff, Pro Se, James C. Gabriel to Join the Internal Revenue Service as a party plaintiff under Rule 19 in order that the Internal Revenue Service collects $100 million taxes, be denied. The government Internal Revenue Service now cannot join with plaintiff James C. Gabriel, Pro Se, in the above captioned case in order that the U.S. Government Internal Revenue Service use its law expertise to become enabled to collect capital gains taxes of over $100 million in the transfer of over $615 million values from the Class B equity bearing MoPac Common Shares to the Class A $5 Preferred $100 Value Shares,

giving to the Class A a value of over $430 per share and an equity bearing Common Stock status, as of Dec. 31, 1972, by merely calling this fraud against my Class B equity bearing stocks a "Plan of Recapitalization" under Section 20a of the Interstate Act.

For that reason I am appealing this Order by the U.S. District Court that denied my motion, to the United States Supreme Court. In order to do that I am asking this Honorable Court to please have the Honorable James Hunter III, U.S. Circuit Judge; Honorable Lawrence A. Whipple, Chief, U.S. District Judge; and Clarkson S. Fisher, U.S. District Judge, sign their own signatures on this Court Order denying my motion, because *the Court Order has no official signature on it of the above Honorable Judges,* that I received.

STATE OF NEW JERSEY,
COUNTY OF MONMOUTH, *ss.*:

JAMES C. GABRIEL, Pro Se, Plaintiff, being duly sworn, deposes and says: that he is appealing the U.S. District Court Order denying him to join the Internal Revenue Service under Rule 19 of the Rules of Civil Proced., and for other reasons:

1) This is my *Notice of Appeal* to the United States Supreme Court *after* I have received a signed Original Filed Copy, signed by Honorable James Hunter, III, U.S. Circuit Judge; Honorable Lawrence A. Whipple, Chief, U.S. District Judge; and Honorable Clarkson S. Fisher, U.S. District Judge, of the Civil Action Order, Civil Action #74-471, James C. Gabriel, Pro Se, Plaintiff, v. U.S.A. and

Interstate Commerce Commission, Defendants, Missouri Pacific R.R. Co., Intervening Def., denying my Motion to Join the Internal Revenue Service under Rule 19 into this MoPac Case to help the I.R.S. collect $100 million in taxes.

2) My Civil Action #74-471 Notice of Motion to Require Joinder of the Internal Revenue Service under Rule 19 for the I.R.S. to become enabled to collect Capital Gains taxes of over $100 million, was received and stamped by the U.S. District Court on Jan. 27, 1976, copy of which I mailed to Mr. Alexander, Director of Int. Rev. Service, Washington, D.C., by regular first class mail. I did not see the I.R.S. object to this Motion. Since when is the Justice Dep't. the I.R.S., to quash this Motion, which it did?

/s/ JAMES C. GABRIEL, Pro Se

JAMES C. GABRIEL, Pro Se
P.O. Box 94, Sea Girt, N.J. 08750
201-899-6200

Dated: Monmouth County of N.J.

Subscribed & Sworn Before Me
This 20th day of March, 1976.

[SEAL]

MARIE SOARES
Notary Public of New Jersey
My Commission Expires Dec. 20, 1978

Affidavit of James C. Gabriel
Dated April 22, 1976

EXHIBIT E

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Civil Action #74-471

JAMES C. GABRIEL, *Pro Se,*

Plaintiff,

—v.—

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
MISSOURI PACIFIC RAILROAD COMPANY,

Intervening Defendant.

Affidavit in regards to Plaintiff's Notice of Motion and Affidavit filed on March 22, 1976 and stamped Original Filed Mar 22, 1976 Angelo Locasio Clerk to Require That the Order by This Honorable Court dated on the 17th day of March, 1976, that the motion by plaintiff Gabriel to Join the Internal Revenue Service Under Rule 19 as a Party Plaintiff, be denied, should be signed by Honorable James Hunter III, U.S. Circuit Judge; Honorable Lawrence A. Whipple, Chief U.S. District Judge; Clarkson S. Fisher, U.S. District Judge, in order that plaintiff Gabriel may become officially enabled to make a Notice of Appeal to the U.S. Supreme Court, to have the U.S. Supreme Court make

an official ruling on my motion, Original Filed Jan. 27, 1976, to Require Joinder of the Internal Revenue Service Under Rule 19 in order that the Internal Revenue Service can collect capital gains taxes of over $100 million on the transfer of over $615 million values from the Class B equity bearing MoPac Common Stock to the Class A $5 Preferred $100 Value Stocks without having paid any capital gains taxes to the United States Government Internal Revenue Service on the transfer of $615 million values.

STATE OF NEW JERSEY,
COUNTY OF MONMOUTH, *ss.*:

JAMES C. GABRIEL, Pro Se, Plaintiff, being duly sworn, deposes and says: I am again asking this Honorable Court to please have the Honorable James Hunter III, U.S. Circuit Judge; Honorable Lawrence A. Whipple, Chief, U.S. District Judge, to sign their signatures on the Court Order dated Original Filed Mar 17, 1976, Angelo W. Locasio, Clerk, because this Order is without their signatures. I must have their signatures in order that I may become enabled officially to make a Notice of Appeal to the Supreme Court of the United States, to have the Supreme Court make an official ruling on my Motion to Require Joinder of the Internal Revenue Service Under Rule 19 in order that the IRS becomes enabled to collect capital Gains taxes of over $100 million on the transfer of over $615 million values in retained income and property values from the MoPac Class B equity bearing Common Stocks to the $5 Class A Preferred $100 Value MoPac Shares without having paid any Capital gains taxes to the U.S. Government I.R.S. on this $615 million.

Respectfully submitted,

/s/ JAMES C. GABRIEL, Pro Se

JAMES C. GABRIEL, Pro Se
P.O. Box 94, Sea Girt, N.J. 08750

Dated: Monmouth County of N.J.

Subscribed & Sworn Before Me
This 22nd day of April, 1976.

[SEAL]

STEVEN S. GRALLA
Notary Public of New Jersey
My Commission Expires January 20, 1980

Original Filed
Apr 22 1976
Angelo W. Locascio, Clerk

Second Order of United States District Court, District of New Jersey

EXHIBIT G

RLR:kew
74 1380
74 1383
74 1384

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action 74-469

JAMES C. GABRIEL, *pro se, et al.*,

Plaintiffs,

—v.—

UNITED STATES OF AMERICA, *et al.*,

Defendants.

This matter, a motion to join the Internal Revenue Service as a party plaintiff, having been opened to the Court by James C. Gabriel and William R. Wesson, plaintiff pro se, in the presence of Jonathan L. Goldstein, United States Attorney for the District of New Jersey, Ronald L. Reisner, Assistant United States Attorney appearing, Fritz R. Kuhn, General Counsel for the Interstate Commerce Commission, Hanford O'Hara, Esquire appearing, Leon Leighton, Esquire appearing and John Charles Vaiani plaintiff pro se appearing, and the Court having considered the

motion and the documents filed in support thereof as well as the letter memorandum in opposition to the motion, and the Court having filed a letter opinion on March 1, 1976 and for good cause shown;

It is on this 17 day of March, 1976

ORDERED that the motion by plaintiff to join the internal Revenue Service as a party plaintiff herein be and the same hereby is DENIED without costs.

/s/ JAMES HUNTER, III

JAMES HUNTER, III
United States Circuit Judge

/s/ LAWRENCE A. WHIPPLE

LAWRENCE A. WHIPPLE
Chief, United States District Judge

/s/ CLARKSON S. FISHER

CLARKSON S. FISHER
United States District Judge

FILED

FILED

MAR 17 1976
At 8:30
ANGELO W. LOCASCIO
Clerk

Notice of Appeal

EXHIBIT H

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action #74-471

Notice Of Appeal To The Supreme Court Of The United States—Appealing for my Motion dated January 27, 1976, to Require Joinder of the I.R.S. under Rule 19, of the Rules of Civil Procedure, so as to enable the U.S. Internal Revenue Service to collect over $100 million in Capital Gains Taxes on the transfer of $615,000,000 values without payment of any taxes.

JAMES C. GABRIEL, *pro se*,
Plaintiff,

—v.—

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,
Defendants,

MISSOURI PACIFIC RAILROAD COMPANY,
Intervening Defendant.

To: *The Clerk of the United States District Court*
District of New New Jersey

SIRS:

The undersigned James C. Gabriel hereby appeals from the Judgement and Order of this Honorable United States District Court's decision on my Notice of Motion to Require Joinder of the Internal Revenue Service of the United States Government under Rule 19 of the Rules of Civil Procedure, making the Internal Revenue Service a party with Plaintiff James C. Gribriel, *Pro Se,* in the above Civil Action Captioned Case, in order that the United States Government Internal Revenue Service may become enabled to collect Capital Gains Taxes of over $100 million on the over $615,000,000 in taxable income values that were transferred from the Missouri Pacific R.R. Class B equity bearing Common shares to the MoPac Class A $5 preferred $100 value shares without paying any Capital Gains Taxes to the Internal Revenue Service of the United States Government on this $615,000,000. James C. Gabriel, *Pro Se,* Appellant-Plaintiff is appealing from this Honorable Court's Judgment and Order denying my Motion to Require Joinder of the Internal Revenue Service with Appellant so as to enable the United States Government I.R.S. to collect these over $100,000,000 Capital Gains Taxes, and Appellant is also appealing from each and every order and ruling upon which this Judgment and Order was based upon that denied Appellant's Motion to Require Joinder of the I.R.S. under Rule 19, which Motion's Original Appellant Filed Jan. 27, 1976, as stamped by Angelo W. Locasia, Clerk.

/s/ JAMES C. GABRIEL
James C. Gabriel, *Pro Se*
Post Office Box 94,
Sea Girt, N. J. 08750

Service to: Clerk of the Court, one original and seven copies.

Certificate of Service

I, JAMES C. GABRIEL, *Pro Se,* Petitioner, do hereby certify that 3 copies of each of the above and foregoing Petitioner's Jurisdictional Statement has been deposited in the United States Mail, postage prepaid, on the 15th day of June, 1976, to the following addressees:

JONATHAN L. GOLDSTEIN
U.S. Attorney for the District of New Jersey
Newark, N.J. 07101

HAROLD L. REISNER
Assistant U.S. Attorney
Federal Building
Trenton, N.J. 08608

LEON LEIGHTON, Esquire
MILTON ROSENKRANZ, Esquire
6 East 45th Street
New York City, N.Y. 10017

JOHN H.D. WIGGER, Esquire
Anti-Trust Division
Dep't of Justice
Washington, D.C.

HANFORD O'HARA
Office of the General Counsel
Interstate Commerce Commission
Washington, D.C.

JOHN CHARLES VAIANI
1313 River Ave.
Point Pleasant, N.J.

WILLIAM R. WESSEN
1550 Ocean Ave.
Mantoloking, N.J.

James C. Gabriel Pro se

/s/ JAMES C. GABRIEL
James C. Gabriel, *Pro Se*
Plaintiff-Appellant

No. 75-1815

In the Supreme Court of the United States

OCTOBER TERM, 1976

JAMES C. GABRIEL, APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

MOTION TO DISMISS

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

ROBERT S. BURK,
Acting General Counsel,
Interstate Commerce Commission,
Washington, D.C. 20423.

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1815

JAMES C. GABRIEL, APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

MOTION TO DISMISS

Pursuant to Rule 16(1)(a) of the Rules of this Court, the Solicitor General, on behalf of the United States of America and the Interstate Commerce Commission, moves that this appeal be dismissed.

This is a direct appeal from an order of a three-judge district court denying appellant's motion to join the Internal Revenue Service as a plaintiff in an action originally brought by appellant. The action in which the order was entered was brought to set aside an order of the Interstate Commerce Commission. The Commission had approved in that order, pursuant to Section 20a of the Interstate Commerce Act (49 U.S.C. 20a), the issuance of securities by the Missouri Pacific Railroad Company ("MoPac") as part of a plan of recapitalization. *Missouri Pacific R. Co. Securities,* 347 I.C.C. 377. This plan of recapitalization constituted the settlement of a class action suit brought

by holders of Class B MoPac stock. Appellant is a dissatisfied member of that class.

On January 27, 1976, appellant moved to join the Internal Revenue Service as a plaintiff (J.S. 1-2). The stated purpose of the proposed joinder was to enable the IRS to collect certain capital gains taxes that appellant asserted were owed because of stock transfers made pursuant to the recapitalization (J.S. 2). On March 17, 1976, the court entered an order denying appellant's motion (J.S. App. 23-24).

The appeal should be dismissed for want of jurisdiction. Appeals to this Court from orders entered by three-judge district courts are governed by 28 U.S.C. 1253, which allows appeals only "from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction * * *." The order appellant seeks to appeal, denying his motion to join the IRS as a plaintiff in his action, is not an order "granting or denying * * * an interlocutory or permanent injunction"; rather, it is an interlocutory ruling of a type from which a direct appeal may not be taken to this Court. *Goldstein* v. *Cox*, 396 U.S. 471, 477; see also *Mitchell* v. *Donovan*, 398 U.S. 427, 430-432.

Furthermore, the appeal is untimely. As noted, the court entered its order denying appellant's motion to join the IRS as a plaintiff on March 17, 1976 (J.S. 23-24). The 30-day period provided by 28 U.S.C. 2101(a) for appealing "from an order granting or denying * * * an interlocutory or permanent injunction" and by 28 U.S.C. 2101(b) for "[a]ny other direct appeal to the Supreme Court which is authorized by law" from an interlocutory order expired on April 16, 1976. The notice of appeal was not filed until April 23, 1976. The time limits specified by 28 U.S.C. 2101 are jurisdictional (see *Communist Party of Indiana* v. *Whitcomb*, 414 U.S. 441, 445-446).

It is therefore respectfully submitted that the appeal should be dismissed.

ROBERT H. BORK,
Solicitor General.

ROBERT S. BURK,
Acting General Counsel,
Interstate Commerce Commission.

AUGUST 1976.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1815

JAMES C. GARBIEL, *Pro Se*, a Class B Equity Bearing Common Stockholder in the Missouri Pacific Railroad Company, for Himself,

Plaintiff-Appellant, Pro Se,

—v.—

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants-Appellees,

MISSOURI PACIFIC RAILROAD COMPANY,

Intervening Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

(THREE-JUDGE COURT)

MOTION TO DISMISS OR TO AFFIRM BY APPELLEE MISSOURI PACIFIC RAILROAD COMPANY

LEON LEIGHTON
Attorney for Appellee
Missouri Pacific Railroad
Company
6 East 45th Street
New York, New York 10017

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STATUTES AND RULES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-.....

JAMES C. GARBIEL, *Pro Se,* a Class B Equity Bearing Common Stockholder in the Missouri Pacific Railroad Company, for Himself,

Plaintiff-Appellant, Pro Se,

—v.—

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants-Appellees,

MISSOURI PACIFIC RAILROAD COMPANY,

Intervening Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY

(THREE-JUDGE COURT)

MOTION TO DISMISS OR TO AFFIRM BY APPELLEE MISSOURI PACIFIC RAILROAD COMPANY

Statement

Pursuant to Rule 16, appellee Missouri Pacific Railroad Company (MoPac) moves to dismiss the appeal herein. If such motion be denied, appellee moves to affirm the order appealed from.

The appeal is taken from an order of a three-judge District Court in the District of New Jersey, denying appellant's motion to join the Internal Revenue Service as a party plaintiff in the action (J.S. 31-32). Appellant summarizes his motion as one "to Require Joinder of the Internal Revenue Service Under Rule 19 in order that the IRS becomes enabled to collect capital Gains taxes of over $100 million on the transfer of over $615 million values in retained income and property values from the MoPac Class B equity bearing Common Stocks to the $5 Class A Preferred $100 Value MoPac Shares without having paid any Capital gains taxes to the U. S. Government I.R.S. on this $615 million" (J.S. 29).

The action had been brought by plaintiff to set aside an order of the Interstate Commerce Commission which granted authority to MoPac, pursuant to 49 U.S.C. §20a, to issue securities in accordance with a plan to recapitalize (17a). That order was affirmed by a judgment of the same three-judge District Court entered on May 6, 1976 (14a-15a). No appeal has been taken from that judgment, though the time to appeal has expired.

The opinion of the District Court affirming the Commission's order is printed at 16a-25a. The Commission's report approving the plan of recapitalization is printed in *Missouri Pacific Railroad Company—Securities,* 347 I.C.C. 377 (1973). The opinion of the District Court refers to an opinion of the three-judge Court for the Eastern District of Missouri, which similarly affirmed the Commission's order. That unreported opinion is printed at 26a-35a. The opinion of Judge Weinfeld, approving the proposed plan of recapitalization which had been agreed upon in connection with the settlement of Class B stockholders' class

action, is reported in *Levin* v. *Mississippi River Corporation,* 59 F.R.D. 353 (S.D.N.Y. 1973), affd. sub nom. *Wesson* v. *Mississippi River Corporation,* 486 F.2d 1398 (2d Cir. 1973), *cert. den.* sub nom. *Wesson* v. *Levin,* 414 U.S. 1112 (1973), reargument denied, 415 U.S. 937 (1974).

The Motion to Dismiss

The motion to dismiss is made on the ground that the order appealed from is not one "granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." 28 U.S.C. §1253. See *Goldstein* v. *Cox,* 396 U.S. 471, 474-479 (1970); *Mitchell* v. *Donovan,* 398 U.S. 427, 430-432 (1970); *Rockefeller* v. *Catholic Medical Center,* 397 U.S. 820 (1970); *Francis* v. *Chamber of Commerce of United States,* 481 F.2d 192, 194 (4th Cir. 1973).

The Motion to Affirm

Actions similar to plaintiff's were brought by Vaiani and Wesson, two other MoPac stockholders similarly situated. The three actions were consolidated in the District Court.

On August 4, 1975, Vaiani made a motion "to invite the United States Government law representatives of the Internal Revenue Service of the United States of America to represent the federal government on the 'over 615 million dollars profits that the federal government failed to collect taxes on'" (9a). Appellant appeared in support of the motion, and a full discussion occurred (9a, 12a).

At the direction of the Court, the United States Attorney sent a copy of the motion to the Internal Revenue Service, with a copy of the covering letter to appellant (1a-3a). That letter stated: "I am writing to you as the result of the suggestion made at the hearing by Chief Judge Whipple so that if the pro se plaintiffs chose to provide information to your agency, such persons can be directed to the appropriate Internal Revenue Service Officer without delay. By copy of this letter I am providing to the plaintiffs IRS Publication 733" (2a). As indicated therein, appelllant was furnished a copy of IRS Publication 733, indicating that any one who provides the Internal Revenue Service "with information that leads to the detection and punishment of anyone guilty of violating the Internal Revenue laws" may claim a reward (4a-6a).

On August 15, Regional Counsel of the Internal Revenue Service informed appellant of the receipt of the foregoing material, and advised appellant where to supply information relating to violations of internal revenue laws (7a-8a). It does not appear that appellant ever supplied such information.

On September 17, the Court entered an order denying the Vaiani motion (9a-10a). Copy of this order was served on appellant. No appeal was taken from that order.

On January 27, 1976, appellant filed the instant motion in the District Court (J.S. 27). Copy of that motion was mailed to the Director of the Internal Revenue Service in Washington (*ibid.*). On February 9, the United States Attorney wrote to the Court reviewing the history of the efforts to direct the Internal Revenue Service to become a party (11a-13a).

If the motion to dismiss be denied, the motion to affirm should be granted for three reasons, any one of which would be sufficient.

1. The District Court has no power to require the Internal Revenue Service to become a party to the action. 26 U.S.C. §7401 provides: "No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary or his delegate authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced."

2. Even if the District Court had power to make such a direction, it properly exercised its discretion not to do so. Appellant had sufficient opportunity to bring this matter to the attention of the Internal Revenue Service (12a-13a). He also had a very persuasive incentive to do this, because of the substantial reward which he could claim in the event that the Government collected the over $100 million in taxes which he claims to be due (7a-8a).

It is apparent from the foregoing that appellant has no real interest in the federal fisc. His only concern is to ask the Internal Revenue Service to try his case against another department of the federal government, the Interstate Commerce Commission. This is sought despite the fact that no merit was found by Judge Weinfeld in appellant's attack on MoPac's capitalization, or by the three-judge Courts in Missouri and New Jersey in his attacks upon the Commission's order.

3. Appellant has not demonstrated, as required by F. R. Civ. P. 19, either that, in the absence of the Internal

Revenue Service, "complete relief cannot be accorded among those already parties"; or that the Internal Revenue Service "claims an interest relating to the subject of the action and is so situated that the disposition of the action in [its] absence may (i) as a practical matter impair or impede [its] ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reasons of [its] claimed interest."

CONCLUSION

For the foregoing reasons, it is submitted that the appeal should be dismissed. If the appeal is not dismissed, the order appealed from should be affirmed.

Respectfully submitted,

LEON LEIGHTON
Attorney for Appellant
Missouri Pacific Railroad Company

APPENDIX

APPENDIX

Letter, United States Attorney to Internal Revenue Service

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY
FOR THE DISTRICT OF NEW JERSEY
NEWARK, NEW JERSEY 07101

August 7, 1975

John J. Hopkins, Esquire
Assistant Regional Counsel
Internal Revenue Service
Post Office Box 480
Newark, New Jersey 07101

Re: James C. Gabriel, pro se, et al v. United States of America, et al—Civil Action 74-469

Dear Mr. Hopkins:

Enclosed is a copy of the motion of plaintiff pro se John Charles Vaiani dated August 4, 1975 in the above-referenced matter. The three-judge Court ruled from the bench on August 6 that the motion became moot as a result of my appearance in response to the motion. Enclosed is a copy of the Order submitted to the Court.

After receiving the motion on the afternoon of August 5, on August 6 I contacted William McElroy of the Internal Revenue Service Intelligence Division in Newark and Eric Kazin, Claims Examiner of the Audit Division of the In-

ternal Revenue Service who advised me concerning the provisions of 26 U.S.C. Section 7623 and Treasury Regulation 301.7623 *et seq.*

The motion by pro se plaintiff contends that the Government "has failed to collect taxes on" the profits of the Missouri Pacific Railroad realized from the plan of recapitalization approved by the Interstate Commerce Commission. This plan is best described in *Levin* v. *Mississippi River Corporation,* 59 F.R.D. 353 (S.D.N.Y. 1973, *aff'd,* 486 F.2d 1398 (2d Cir. 1973). At the hearing before the Court on August 6, I informed the Court that the pro se plaintiffs had a viable remedy under Section 7623 instead of moving the Court to invite the Internal Revenue Service to represent the Government. In short, that remedy, as I understand it, is for the plaintiffs to reveal information to the Internal Revenue Service so that your agency may determine whether additional taxes may be due and owing from the Missouri Pacific Railroad and whether any revenue laws have been violated. Any plaintiffs providing such information, such as Mr. Vaiani, could then file a claim under Section 7623 for a reward as an informer.

I am writing to you as the result of the suggestion made at the hearing by Chief Judge Whipple so that if the pro se plaintiffs chose to provide information to your agency, such persons can be directed to the appropriate Internal Revenue Service officer without delay. By copy of this letter I am providing to the plaintiffs IRS Publication 733.

If this office can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

JONATHAN L. GOLDSTEIN
United States Attorney

/s/ RONALD L. REISNER

By: Ronald L. Reisner
Assistant United States Attorney

Enclosures

cc—Hon. James Hunter, III, Circuit Judge
Hon. Lawrence A. Whipple, Chief Judge
Hon. Clarkson S. Fisher, District Judge
Mr. James C. Gabriel—C.M. R.R.R.
Mr. John Charles Vaiani—C.M. R.R.R.
Mr. William R. Wesson—C.M. R.R.R.
Leon Leighton, Esquire

IRS Publication 733

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

INFORMATION ABOUT REWARDS FOR INFORMATION GIVEN TO THE INTERNAL REVENUE SERVICE

Provisions of Law

Section 7623 of the Internal Revenue Code permits the Internal Revenue Service to pay a reward to anyone who provides it with information that leads to the detection and punishment of anyone guilty of violating the Internal Revenue laws.

Who May File A Claim For Reward

Under the above provisions, you may file a claim for reward unless:

1. You were employed by the Department of the Treasury at the time you received or submitted the information; or
2. You are a present or former Federal employee, who received the information in the course of your official duties.

An executor, administrator, or other legal representative may file a claim for reward on behalf of a decedent if that decedent was eligible to file such a claim before his death. The legal representative must attach to his claim evidence of his authority to file it.

IRS Publication 733

Submitting Information For A Reward

If you have information you believe might be valuable to the Internal Revenue Service, you may submit it in person or writing to the Office of the Director, Intelligence Division, Internal Revenue Building, Washington, D.C. 20224; or to a representative of the Intelligence Division, office of any District Director.

Filing A Claim For Reward

To file a claim for reward, take the following steps when, or as soon as possible after, you submit the information:

1. Notify the office or person to whom you reported the information that you are claiming a reward.
2. File a formal claim for reward by completing Form 211, signing it with your true name, and mailing it to an Informants Claim Examiner at the office of any District Director of Internal Revenue; or to the Director, Intelligence Division, Washington, D.C. 20224. If you submitted the information in person, include in your claim the name and title of the person you reported the information to, and the date you reported it.

If you used an identity other than your true name when you originally reported the information, attach to the claim proof that you are the person who gave the information. (The Service does not disclose the identity of its informants to unauthorized persons.)

IRS Publication 733

Amount And Payment Of Reward

The District Director will determine whether a reward will be paid to you, and its amount. In making his decision he will evaluate the information you provided, in relation to the facts developed by the resulting investigation. A reward usually will not exceed 10 percent of the additional taxes, penalties, and fines found to be due. Any reward will be paid as soon as possible after collection of these additional amounts.

Publication 733 (1-74)

Letter, Internal Revenue Service to Appellant

Department of the Treasury
REGIONAL COUNSEL
INTERNAL REVENUE SERVICE
Mid-Atlantic Region
P.O. Box 480
Newark, New Jersey
07101

Aug. 15, 1975

Mr. James C. Gabriel
R.D. #1, Box 16
Colts Neck, New Jersey 07722

In re: James C. Gabriel, pro se, et al v.
United States of America, et al—
Civil Action 74-469

Dear Mr. Gabriel:

The United States Attorney has advised this office by letter of August 7, 1975, copy sent to you, that at a Federal Court hearing on August 6, 1975, Chief Judge Whipple suggested that if the pro se plaintiffs in the captioned action chose to provide information to the Internal Revenue Service concerning the incurrence of tax liability by the Missouri Pacific Railroad, and the violation of Internal Revenue laws, they should be directed to the appropriate division of the Internal Revenue Service.

Please be advised that information relating to violations of Internal Revenue laws should be directed to the Chief, Intelligence Division, 970 Broad Street, Newark, New Jer-

Letter, IRS to Appellant

sey 07102; and information relating to the incurrence of additional tax liability should be directed to the Chief, Audit Division, 970 Broad Street, Newark, New Jersey.

Very truly yours,

ROBERT L. LIKEN
Regional Counsel

By: /s/ JOHN J. HOPKINS
John J. Hopkins
Assistant Regional Counsel

cc: Chief, Intelligence Division t/w ltr dated 8/7/75
Chief, Audit Division t/w ltr dated 8/7/75
Assistant United States Attorney Ronald Reisner

Order Dated September 17, 1975

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Civil Action 74-469

JAMES C. GABRIEL, *pro se, et al.*,
Plaintiffs,

—v.—

UNITED STATES OF AMERICA, *et al.*,
Defendants.

This matter, a motion dated August 4, 1975 and received by the Office of the United States Attorney for the District of New Jersey on August 5, 1975 to invite the United States Government law representatives of the Internal Revenue Service of the United States of America to represent the federal government on the "over 615 million dollar profits that the federal government failed to collect taxes on," having been opened to the Court by John Charles Vaiani, plaintiff pro se, in the presence of Jonathan L. Goldstein, United States Attorney for the District of New Jersey, Ronald L. Reisner, Assistant United States Attorney appearing, Fritz R. Kahn, General Counsel for the Interstate Commerce Commission, Hanford O'Hara, Esquire appearing, Leon Leighton, Esquire appearing, James C. Gabriel, plaintiff pro se appearing, and William R. Wesson, plaintiff pro se appearing, the Court having considered the notice of motion, the affidavit of John Charles Vaiani in support of

Order Dated September 17, 1975

the motion, the oral argument of pro se plaintiff and counsel and the Court having determined that the motion is moot since a United States Government law representative of the Internal Revenue Service of the United States of America, namely, Assistant United States Attorney Ronald L. Reisner appeared before this Court on August 6, 1975, and for good cause shown;

It is on this 17th day of September, 1975

ORDERED that the motion dated August 4, 1975 herein be and the same hereby is denied without costs.

/s/ JAMES HUNTER
JAMES HUNTER, III
United States Circuit Judge

LAWRENCE A. WHIPPLE*
Chief, United States District Judge

/s/ CLARKSON S. FISHER
CLARKSON S. FISHER
United States District Judge

ORIGINAL FILED
Sept. 18, 1975

ANGELO W. LOCASCIO, *Clerk*

* Judge Whipple concurs in this decision but because of illness was unable to sign the order.

Letter, United States Attorney to United States District Court

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY
FOR THE DISTRICT OF NEW JERSEY
Newark, New Jersey 07101

February 9, 1976

Honorable James Hunter, III
Circuit Judge
401 Market Street
Camden, New Jersey 08101

Honorable Lawrence A. Whipple
Chief Judge
United States District Court
Federal Building
Newark, New Jersey 07101

Honorable Clarkson S. Fisher
United States District Judge
Federal Building
Trenton, New Jersey 08607

Re: James C. Gabriel, pro se, et al v. U. S., et al
Civil Action 74-469

Dear Members of the Court:

On January 30, 1976 this office was served by plaintiff Wesson with a notice of motion with no return date as re-

quired by Rule 12C of this Court. The notice and supporting affidavit concern plaintiff's request to require joinder of the "Internal Revenue Service" as a party defendant under F.R.Civ.P. 19. A similar notice of motion was received on February 5, 1976 from plaintiff Gabriel.

First, the relief which plaintiffs Wesson and Gabriel seek has already been accomplished since the sovereign United States of America has already been properly joined as a defendant. The law is well-established that the agencies of the United States cannot be sued *eo nomine* in the absence of any statutory authority. *Blackmar* v. *Guerre,* 342 U.S. 512 (1952); *Krouse* v. *United States Government,* 380 F.Supp. 219, 221 (C.D. Cal. 1974). The only proper party defendant could be the United States of America, not its agency, the Internal Revenue Service. *Krouse, supra* at 221. Since the United States has already been joined, the motion should be denied as moot.

Second, plaintiffs' motions are essentially the same requests for relief raised by plaintiff Vaiani at the trial of this consolidated case on August 6, 1975. A full discussion occurred (see Transcript at 77-84) and plaintiff Vaiani's "motion" was denied by order of this Court on September 18, 1975. Having litigated this very same claim at trial, there is no need to re-litigate the same issue with respect to the remaining plaintiffs in this consolidated action.

Finally, plaintiffs have had ample opportunity to provide any information to the responsible officials in the IRS. In response to Chief Judge Whipple's suggestion at trial, this

office notified by letter the Regional Counsel of IRS on August 7, 1975. Copies of that letter were provided to all counsel, Members of this Court, and all plaintiffs as evidenced by the return certified mail receipts which were returned to this office. In response to that letter, on August 14, 1975, the Regional Counsel's office by letter notified the plaintiffs of the proper procedure. Copies of those letters dated August 14, 1975 are enclosed.

Accordingly, under all of these circumstances, the motions from plaintiffs Wesson and Gabriel to require joinder of the Internal Revenue Service under Rule 19 should be denied. The motion can, perhaps, be decided pursuant to F.R.Civ.P. 78 and this letter memorandum considered in lieu of a formal brief.

Respectfully,

JONATHAN L. GOLDSTEIN
United States Attorney
By: RONALD L. REISNER
Assistant United States Attorney

Enclosures

cc—Mr. James C. Gabriel—CMRRR w/copy Letrs.
Mr. John Charles Vaiani—CMRRR "
Mr. William R. Wesson—CMRRR "
Leon Leighton, Esquire "

Judgment of District Court

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Consolidated Civil Actions
74-471, 74-470, 74-469

JAMES C. GABRIEL, *Pro Se,* JOHN CHARLES VAIANI, *Pro Se,* WILLIAM R. WESSON, *Pro Se,*

Plaintiffs,

—v.—

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants,

—and—

MISSOURI PACIFIC RAILROAD COMPANY,

Defendant-Intervenor.

This matter, having been opened to the Court by James C. Gabriel, John Charles Vaiani and William R. Wesson, plaintiffs pro se, in the presence of Jonathan L. Goldstein, United States Attorney for the District of New Jersey, Ronald L. Reisner, Assistant United States Attorney appearing, Thomas E. Kauper, Assistant Attorney General of the United States, John H. D. Wigger, Esquire, appear-

ing, Fritz R. Kahn, General Counsel for the Interstate Commerce Commission, Hanford O'Hara, Esquire appearing, Milton Rosenkranz, Esquire and Leon Leighton, Esquire appearing, and the Court having considered all of the documents filed as well as the briefs and oral argument of counsel and the Court having filed an opinion on April 20, 1976 and for good cause shown;

It is on this 4th day of May, 1976

ORDERED and ADJUDGED that final order of the Interstate Commerce Commission questioned herein be and the same hereby is AFFIRMED without costs.

/s/ JAMES HUNTER
JAMES HUNTER, III
United States Circuit Judge

/s/ LAWRENCE A. WHIPPLE
Chief, United States District Judge

/s/ CLARKSON S. FISHER
CLARKSON S. FISHER
United States District Judge

ORIGINAL FILED
MAY 6 1976

ANGELO W. LOCASCIO, *Clerk*

Opinion of New Jersey District Court

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

NOT FOR PUBLICATION

Consolidated Civil Actions
74-471, 74-470, 74-469

JAMES C. GABRIEL, *Pro Se,*
JOHN CHARLES VAIANI, *Pro Se,*
WILLIAM R. WESSON, *Pro Se,*

Plaintiffs,

—v.—

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,

Defendants,

—and—

MISSOURI PACIFIC RAILROAD COMPANY,

Defendant-Intervenor.

APPEARANCES:

JAMES C. GABRIEL, *Pro Se*
JOHN CHARLES VAIANI, *Pro Se*
WILLIAM R. WESSON, *Pro Se*

THOMAS E. KAUPER, Esq.,
Asst. Attorney General,

By: JOHN H. D. WIGGER, Esq.,
—and—
JONATHAN L. GOLDSTEIN, Esq.,
United States Attorney,

By: RONALD L. REISNER, Esq.,
For the United States of America

FRITZ R. KAHN, Esq.,
General Counsel,

By: HANFORD O'HARA, Esq.,
For Interstate Commerce Commission

MILTON ROSENKRANZ, Esq.,
LEON LEIGHTON, Esq.,
For the Defendant-Intervenor

Before:

HUNTER, *Circuit Judge,*
WHIPPLE and FISHER, *District Judges.*

FISHER, District Judge

Plaintiffs, three disappointed preferred stockholders of the Missouri-Pacific Railroad Company (hereinafter MoPac), brought this action to set aside and annul an order of the Interstate Commerce Commission which granted authority to MoPac under the Interstate Commerce Act, 49 U.S.C. 20a to issue securities in accordance with a plan submitted to the I.C.C. to recapitalize. Plain-

tiffs and others had opposed the plan before the I.C.C. Jurisdiction is conferred by virtue of §§1336(a), 1398(a), 2284, 2321-2325, 2401 of Title 28 U.S.C. and §1009 of Title 5. The purpose of the suit is to have this court set aside the determination of the I.C.C.

The terms of the plan of recapitalization have previously been settled and approved and reported in a comprehensive opinion and judgment by Judge Weinfeld in a class action brought by Class B stockholders of MoPac, to which class plaintiffs here belong. *Levin* v. *Mississippi River Corp.*, 59 F.R.D. 353 (S.D.N.Y. 1973), aff'd sub nom. *Wesson* v. *Mississippi River Corp.*, 486 F.2d 1398 (2d Cir. 1973), *cert. denied* 414 U.S. 1112 (1973).

Upon reorganization in 1956 under Section 77 of the Bankruptcy Act (11 U.S.C. §205), MoPac, a Missouri corporation, was authorized to issue two classes of stock: Class A (issued to former preferred stockholders) and Class B (issued to former common stockholders). Class A stockholders had certain preferences as to the payment of dividends and in the event of dissolution of the company. Each share of both types had one vote: 1.9 million shares (98%) were held by Class A stockholders, and 40,000 shares (2%) were held by Class B stockholders. Class A holders thus had operational control over the corporation, but on mergers, consolidations or reorganizations involving issuance of additional stock or the alteration of rights of the respective Classes, a majority of each Class was required to approve the action proposed. This situation caused a conflict between the two Classes, a conflict aggravated by the fact that Mississippi River Corporation (Mississippi),

had by 1963 acquired a majority of the Class A shares, while Alleghany Corporation (Alleghany) held a majority of the Class B shares.

In December of 1967 a class and derivative action was commenced on behalf of all Class B stockholders (Alleghany and others) against MoPac, Mississippi, and three directors of MoPac, to compel the payment of higher dividends, past and future. In that action, *Levin* v. *Mississippi River Corp.*, 59 F.R.D. 353 (S.D.N.Y. 1973), *aff'd mem.* 486 F.2d 1398 (2d Cir. 1973), *cert. denied* 414 U.S. 1112, 38 L.Ed.2d 739, *reh. denied* 415 U.S. 939, it was also alleged that certain defendants had engaged in a conspiracy to "freeze out" Class B stockholders in various ways (improperly limiting dividends etc.) and that such acts were also in violation of the Securities Exchange Act and rules thereunder. Plaintiffs sought various types of relief from the Court, including an order compelling payment of higher past and future dividends.

After extensive discovery was undertaken by the parties in the succeeding months and years, during which time efforts at settlement were also pursued, a settlement was finally reached and presented to the court,[1] on the basis of

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[1] The terms of the proposed settlement were described by the court as follows (59 F.R.D. at 360-361):

> (1) each share of Class A stock would be converted into one share of $5 cumulative preferred stock, with a liquidating preference of $100 per share, convertible into one share of new common after one year following I.C.C. authorization of the issuance of new securities and redeemable at the option of MoPac for $100 per share, after December 31, 1975. This would require the issuance of 1,864,052 shares of the new stock to the present holders of the Class A stock, of which Mississippi would be entitled to receive 1,158,395 shares;

a restructured capitalization which would, if consummated, eliminate the controversy between Class A and Class B shareholders. In March 1973, the district court approved the settlement (59 F.R.D. at 373) and its decision was upheld on appeal (486 F.2d 1398), and certiorari was denied.

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(2) each share of Class B stock would be converted into sixteen shares of new common stock and $850 cash. This would require the issuance of 635,696 shares of new common stock to the present holders of Class B stock, of which Alleghany would be entitled to receive 339,888 shares; this would require a cash payment by MoPac of $33,771,350;

(3) both preferred stock and common stock would have one vote per share;

(4) the Plan and amendment would have to be approved by 75% of the outstanding shares of each class of MoPac stock, including a majority of the shares of each class other than those held by Mississippi and Alleghany—that is, a majority of the minority stockholders of each class;

(5) the issuance of the new shares would have to be approved by the Interstate Commerce Commission;

(6) upon such approvals, Mississippi is required to make a cash tender offer to all Class B stockholders for at least 400,000 shares (approximately 63%) of the new common stock, at $100 per share, and Alleghany (but not the minority B shareholders) must tender all its new common stock (339,888 shares). If more than 400,000 shares are tendered, Mississippi may purchase the shares on a pro rata basis; this would require a cash payment by Mississippi of at least $40,000,000;

(7) all claims asserted in this action and any other claims against the defendants which are based upon or arise from any of the matters alleged in the complaints, regardless of the legal theory upon which they are based, will be dismissed with prejudice;

(8) fees awarded to plaintiffs' attorneys will be paid by MoPac and Mississippi.

If the recapitalization and tender offer are not consummated by December 31, 1973, the settlement agreement would be terminable at the option of Alleghany, Mississippi or MoPac.

Under the proposed settlement, which the court approved, a majority of the minority Class B stockholders could reject the plan (59 F.R.D. at 374). Pursuant to the proposed settlement, and promptly following the court's decision, MoPac, in April 1973, filed its application with the Commission under Section 20a of the Interstate Commerce Act, 49 U.S.C. §20a, for authority to issue the various stocks called for in the recapitalization plan. After notice of the application was given to all MoPac stockholders, hearings were held, at which plaintiffs herein and others expressed their opposition to MoPac's application.

At a special meeting of MoPac stockholders, held on June 15, 1973, 86.5% of the outstanding shares of Class A stock were voted in favor of the recapitalization plan and 83.4% of the outstanding shares of Class B stock were voted in favor of the recapitalization plan. Among the minority shares in both classes (i.e. those shares not owned by either Mississippi or Alleghany), 95.5% of Class A shares present and voting were voted in favor of the plan and 84.7% of the Class B shares present and voting were voted in favor of the recapitalization plan.

On December 14, 1973 Division 3, consisting of three Commissioners, issued its report and order granting MoPac's application. The order was made effective immediately, as time was of the essence in view of the deadline set forth in the settlement agreement. On December 28, 1973 the Commission issued an order denying petitions of plaintiffs and others to stay the effective date of the December 14, 1973 order. On January 23, 1974 the Commission issued its order denying petitions for reconsideration

of the December 14 order and on March 4, 1974, the Commission issued an order denying petitions seeking a finding that an issue of general transportation importance was involved. On January 21, 1974 the MoPac plan of recapitalization was consummated. The instant actions were commenced on April 4, 1974 while the companion case in the Eastern District of Missouri, *Labelle Gillespie* v. *United States, et al.,* Civil Action No. 74-239 C(2) was commenced on April 2, 1974. The Three-Judge Court which was convened in *Labelle Gillespie* v. *United States, et al., supra,* stated in their opinion:

> "The amendment to MoPac's Articles of Association was made in conformity to Missouri law. MoPac's Articles of Association expressly provide that the rights of all holders of capital stock of the company are subject to change, alteration, abrogation, or repeal in any matter permitted by the laws of Missouri. And Section 388.220, R.S. Mo., specifically authorizes modifications of the stock structure of railroad companies such as were here made. Hence, since far more than the requisite number of shareholders of each class of stock has voted in favor of the changes, the question before the Interstate Commerce Commission on the Section 20a application was a very narrow one of whether the issuance of the new securities to effectuate the plan and amendment to the Articles of Association would be 'for some lawful object within [MoPac's] corporate purposes and compatible with the public interest', and would be 'reasonably necessary and appropriate for such purpose'."

This court's function is limited. The decisions of independent regulatory agencies are generally sustained if within the authority of the agency's statutory power and are based upon appropriate findings which are in turn supported by substantial evidence. *Consolo* v. *Federal Maritime Comm'n.,* 383 U.S. 607, 619-621 (1966); *United States* v. *Pierce Auto Freight Lines,* 327 U.S. 515, 535 (1945). This standard applies in cases involving Commission decisions under §20a of the Act. *Chicago S.S. and S.B.R.R.* v. *United States,* 221 F.Supp. 106, 109 (N.D.Ind. 1963). "The test of judicial review for an order of the Commission is whether the action of the Commission is supported by 'substantial evidence' on the record reviewed as a whole." *Metropolitan Shipping Agents of Illinois, Inc.* v. *Interstate Commerce Commission,* 342 F.Supp. 1266, 1268 (D.N.J. 1972).

The Commission's review in the MoPac recapitalization was limited under Section 20a(2) of the Act to a determination of whether the issuance of securities in connection with the plan would be "• • • for some lawful object within [the carrier's] corporate purposes, and compatible with the public interest . . ." and ". . . is reasonably necessary and appropriate for such purpose".

The Commission, in an exhaustive report, found that the recapitalization was the result of extensive arms-length bargaining by MoPac, Mississippi and Alleghany and was analysed by independent financial and investment advisers specializing in corporation and transportation finance. The I.C.C. further noted that the settlement was approved by the court in the *Levin* case, after due consideration being given to the rights and possible remedies of each class of

stockholders. The plan of recapitalization had been approved by a majority of each class of stockholders and by a majority of the minority stockholders of each class. The Commission further found that the allocation of new shares (1 new preferred share for 1 share of old Class A stock, and 16 shares of new common for 1 share of old Class B plus a cash sum) is reasonable and fair in view of the present and prospective worth of MoPac. The I.C.C. summarized in their report (p. 59) as follows:

> "In our opinion, the proposed plan is not contrary to the public interest. In fact, considering the benefits to each class of stock and the advantages to the carrier, it is our conclusion that the plan of recapitalization will be in the best interest of the stockholders and the carrier and will be compatible with the public interest."

The benefits of the recapitalization plan to MoPac include the elimination of the old class voting system and the dividend conflict which caused considerable dissension in the past and the fact that the Mississippi River Corporation would own a majority of both preferred and common stocks, thereby eliminating the old Class B veto power. As a result, MoPac will have greater management flexibility and stability and MoPac will be in a better position to consider and be considered for mergers and consolidations in the future.

As to the main contention of the plaintiffs asserting that they were unlawfully deprived of the value of their old Class B stock on the theory that the "book value" of

the Class B stock was almost $9,000 a share, the I.C.C. pointed out that book value cannot be the measure of fair value of stock; rather, earnings must be considered and the capitalized earnings method is the proper means of analysis. See, *Schwabacher* v. *United States,* 334 U.S. 182 (1948); *Boston & M.R. Securities Modification,* 275 I.C.C. 397, 431-33 (1950); *Levin* v. *Mississippi River Corp., supra,* at 369.

As to the other contentions of the plaintiff, they do not merit extensive comment since the Commission's findings on these issues were also warranted.[2]

We do not find any reason to differ with those findings. Our sole function is to determine whether the decision of the Commission is consistent with the public interest and lawful. We agree that it is and affirm those findings and decision.

Therefore, the order of the Commission questioned herein should be and is hereby affirmed.

Submit an Order.

Dated: April 20, 1976

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[2] As the court stated in *Labelle Gillespie* v. *United States et al.,* Civil Action No. 74-239 C(2):

> "Other contentions of plaintiff, rejected by the Commission, included (1) that an 'immutable contract was created by the 1956 plan of reorganization could not be altered over the dissent of a single Class B shareholder; (2) that the settlement plan approved by Judge Weinfeld has a 'congenital defect' in that the *Levin* suit for dividends was 'illegally' converted into a suit for recapitalization; (3) that the settlement plan was forced upon the Class B shareholders by 'court fiat'; (4) that the proxy statement for the stockholders' meeting was false and misleading; and (5) that MoPac, Mississippi and their respective Boards' Directors were guilty of conspiracy, fraud and deceit.
>
> We agree that the Commission's findings on these issues were warranted. So, too, we find no merit to plaintiffs further assertion that Alleghany 'sold out' the other Class B stockholders by entering into the settlement agreement."

Opinion of Missouri District Court

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

No. 74-239-C (2)

LABELLE GILLESPIE,

Plaintiff,

—VS.—

UNITED STATES OF AMERICA, and
INTERSTATE COMMERCE COMMISSION,

Defendants,

MISSOURI PACIFIC RAILROAD COMPANY,

Intervenor-Defendant.

Before WEBSTER, *Circuit Judge,* WANGELIN and REGAN, *District Judges.*

REGAN, *Judge*

By this action heard to a three-judge court, plaintiff seeks to set aside and annul orders of the Interstate Commerce Commission under Section 20a of the Interstate Commerce Act granting authority to the Missouri Pacific Rail-

road Company (MoPac) to issue securities in connection with a plan of recapitalization. Plaintiff is one of several MoPac stockholders who opposed the plan both before the Commission and previously. We have jurisdiction under Sections 1336(a), 1398(a), 2284 and 2321-2325, 28 U.S.C.

The background of this controversy is set forth in detail both in the comprehensive 71 page report of the Commission and in Judge Weinfeld's opinion in *Levin* v. *Mississippi River Corporation,* D. C. N.Y., 59 FRD 353. We briefly summarize.

MoPac is a Missouri corporation which was reorganized in 1956 under Section 77 of the Bankruptcy Act (Section 205, 11 U.S.C.). Upon reorganization, MoPac was authorized to issue two classes of $100 stated capital no par stock: Class A which was issued to former preferred stockholders and Class B issued to former common stockholders. Class A stock was preferentially entitled to non-cumulative dividends of not to exceed $5 per share annually. Each share of both classes was entitled to one vote. Class A stock, which constituted 98 per cent of the total stock, had operational control over the corporation (e.g., power to elect the Board of Directors), but in certain other important areas such as mergers, consolidations and reorganizations involving the issuance of additional stock or the alteration of rights of either class of stock, the separate consent of a majority of both classes was required, thus giving a majority of the numerically small number of Class B shares veto power over such matters. See *Levin* v. *Mississippi River Fuel Corp.,* 386 U.S. 162.

By 1963, Mississippi River Corporation (Mississippi) had acquired a majority of the Class A shares while Alleghany

Corporation (Alleghany) had become the owner of a majority of the Class B shares. Thus, since 1963, Mississippi has elected MoPac's Board of Directors and Alleghany exercised a veto power independent of the other Class B shareholders as to any corporate action necessitating Class B shareholder approval.

Understandably, because of MoPac's increased earnings and other factors, Class B shareholders, led by Alleghany, had become dissatisfied, to say the least, with MoPac's dividend policy of paying only $5 per share annually on Class B stock. As a result, a class and derivative action (*Levin* v. *Mississippi River Corporation, supra*) was instituted in which it was alleged, inter alia, that the defendants were parties to a conspiracy to "freeze out" Class B stockholders by various methods including the payment of unreasonably low dividends, that Mississippi had misused its majority voting power, and that defendants had breached their fiduciary duties. The major relief sought was an order compelling the payment of higher past and future dividends. The director defendants in that suit asserted that their dividend policy was justified by prudent business judgment made in good faith.

Thereafter, commencing in 1968 and continuing until the latter part of 1972, the parties to the *Levin* litigation (including Alleghany, two other minority B stockholders, Mississippi and MoPac) undertook extensive and thorough pretrial discovery, following which a settlement was agreed upon on the basis of a restructured capitalization which would, if consummated, eliminate the underlying cause of the constant stress between Class A and Class B shareholders.

On March 19, 1973, in an exhaustive opinion, Judge Weinfeld approved the proposed settlement as fair and reasonable, noting that "it offered a permanent solution to the long-standing impasse between the two contending groups of stockholders." 59 FRD at 373. The District Court decision was affirmed without opinion on appeal by the Second Circuit, 486 F.2d 1398, and certiorari was denied.

As summarized by Judge Weinfeld, the settlement provided for a Plan of Recapitalization and a proposed Amendment to MoPac's Articles of Association subject to its stockholders' approval to bring about the following:

> "(1) [E]ach share of Class A stock would be converted into one share of $5 cumulative preferred stock, with a liquidating preference of $100 per share, convertible into one share of new common after one year following ICC authorization of the issuance of new securities and redeemable at the option of MoPac for $100 per share, after December 31, 1975. This would require the issuance of 1,864,052 shares of the new stock to the present holders of the Class A stock, of which Mississippi would be entitled to receive 1,158,395 shares;
>
> (2) each share of Class B stock would be converted into sixteen shares of new common stock and $850 cash. This would require the issuance of 635,696 shares of new common stock to the present holders of Class B stock, of which Alleghany would be entitled to receive 339,888 shares; this would require a cash payment by MoPac of $33,771,350;
>
> (3) both preferred stock and common stock would have one vote per share;

(4) the Plan and amendment would have to be approved by 75% of the outstanding shares of each class of MoPac stock, including a majority of the shares of each class other than those held by Mississippi and Alleghany—that is, a majority of the minority stockholders of each class;

(5) the issuance of the new shares would have to be approved by the Interstate Commerce Commission;

(6) upon such approvals, Mississippi is required to make a cash tender offer to all Class B stockholders for at least 400,000 shares (approximately 63%) of the new common stock, at $100 per share, and Alleghany (but not the minority B shareholders) must tender all its new common stock (339,888 shares). If more than 400,000 shares are tendered, Mississippi may purchase the shares on a pro rata basis; this would require a cash payment by Mississippi of at least $40,000,000;

(7) all claims asserted in this action and any other claims against the defendants which are based upon or arise from any of the matters alleged in the complaints, regardless of the legal theory upon which they are based, will be dismissed with prejudice;

(8) fees awarded to plaintiffs' attorneys will be paid by MoPac and Mississippi.

If the recapitalization and tender offer are not consummated by December 31, 1973, the settlement agreement would be terminable at the option of Alleghany, Mississippi or MoPac."

Thus, in addition to the required approval of the Interstate Commerce Commission for the issuance of the new shares, the recapitalization plan could not have been effected without the consent of 75 per cent of the outstanding stock of each class including a majority of the shares of each such class held by others than Mississippi and Alleghany. Substantially more than the necessary number of shares having voted in favor of the recapitalization plan, the issue before the Interstate Commerce Commission was whether it should grant its approval under Section 20a to issue the securities called for in the plan of recapitalization.

After a hearing at which all parties were accorded the right to present evidence and arguments, the Commission issued its report and order on December 14, 1973, granting MoPac's application, the order being made effective immediately in view of the deadline set forth in the settlement agreement. On December 28, 1973, the Commission denied petitions to stay the effective date of its December 14, 1973 order, and on January 23, 1974, it denied petitions for reconsideration of that order. On March 4, 1974, the Commission denied petitions seeking a finding that an issue of general transportation importance is involved. The plan of recapitalization was consummated on January 21, 1974, and this suit followed on April 2, 1974.

The amendment to MoPac's Articles of Association was made in conformity to Missouri law. MoPac's Articles of Association expressly provide that the rights of all holders of capital stock of the company are subject to change, alteration, abrogation, or repeal in any manner permitted

by the laws of Missouri. And Section 388.220, R.S.Mo., specifically authorizes modifications of the stock structure of railroad companies such as were here made. Hence, since far more than the requisite number of shareholders of each class of stock has voted in favor of the changes, the question before the Interstate Commerce Commission on the Section 20a application was the very narrow one of whether the issuance of the new securities to effectuate the plan and amendment to the Articles of Association would be "for some lawful object within [MoPac's] corporate purposes and compatible with the public interest," and would be "reasonably necessary and appropriate for such purpose."

The Commission recognized that the rights of minority stockholders are a part of the public interest, so that in determining whether the transaction was "compatible with the public interest," it was required "to see that the interests of minority stockholders are protected and that the overall proposal is just and reasonable as to those stockholders."

In reaching its conclusion that the proposed plan was in the best interest of the stockholders and the carrier and was compatible with the public interest, the Commission considered the fact that the recapitalization plan had been agreed upon after extensive arms-length bargaining between MoPac, Mississippi, and Alleghany, and approved by the court in the *Levin* case, the value per share of the Class A and Class B stock, the consideration to be paid for each share of existing stock, the evidence of the parties at the hearing, and the arguments and contentions in their briefs. In addition, consideration was given to the fact that the

elimination of the veto power held by the Class B stock would have the effect of simplifying the structure of MoPac stock and that the conversion feature of the new stock might result in an all-common stock structure. It was the opinion of the Commission that the proposed plan would provide an effective means for the payment of higher dividends, would render equity financing more feasible, would more equitably distribute the voting power among the stockholders, would eliminate the confusion between Class A and B stockholders and would thereby enable MoPac to more effectively plan a more efficient and economical transportation system, including mergers with other railroads.

The principal contention of plaintiff and other minority Class B stockholders to the effect that the recapitalization plan unlawfully deprived them of a substantial portion of the full value of their Class B stock. In large part, the protestants, including plaintiff, argued that the Class B stock, at the minimum, should have been valued at "book value" ($9000 per share) if not at a higher up-dated valuation in excess of that figure.

The claim was considered at length by the Commission in light of the pertinent evidence. In rejecting "book value" as the measure of the actual value of the Class B stock, the Commission held that bookkeeping entries evidencing "book value" are of little significance in measuring the actual value of a going company such as MoPac. Instead, based on the testimony of expert witnesses, the Commission utilized the capitalized earnings method, as the result of which it held that the Class B shareholders would in fact receive "value for value." See in this connection the en-

lightening discussion in *Levin* v. *Mississippi River Corporation,* supra, 59 FRD 1c 369ff; *Schwabacher* v. *United States,* 334 U.S. 182; and *Borg* v. *International Silver Company,* 2 Cir., 11 F.2d 147, 152.

Other contentions of plaintiff, rejected by the Commission, included: (1) that an "immutable" contract was created by the 1956 plan of reorganization which could not be altered over the dissent of a single Class B shareholder; (2) that the settlement plan approved by Judge Weinfeld has a "congenital defect" in that the *Levin* suit for dividends was "illegally" converted into a suit for recapitalization; (3) that the settlement plan was "forced" upon the Class B shareholders by "court fiat;" (4) that the proxy statement for the stockholders' meeting was false and misleading; and (5) that MoPac, Mississippi, and their respective boards' directors were guilty of conspiracy, fraud and deceit.

We agree that the Commission's findings on these issues were warranted. So, too, we find no merit to plaintiff's further assertion that Alleghany "sold out" the other Class B stockholders by entering into the settlement agreement. As the Commission noted in its report: "Alleghany as the majority owner of the Class B stock has spent considerable sums of money over the years to protect its interest. It is the party to the agreement that has the most to gain and the most to lose. Under the circumstances, there is little or no likelihood that Alleghany would agree to surrendering its stock for less than fair value. Besides all the evidence of record contraindicates that Alleghany agreed to accept less than fair value."

Our sole function in this proceeding is to determine whether the orders of the Commission are supported by substantial evidence on the whole record and do not involve an error of law. *Norfolk & Western Railway Co.* v. *United States,* D. C. Mo., 316 F.Supp. 1396, 1399. In our judgment, the Commission applied correct legal standards in its consideration of the application and its ruling thereon. The evidence before the Commission, which is summarized in its report and which need not be here repeated, amply supports the order granting MoPac's application. Accordingly, judgment will be entered affirming the orders of the Commission and dismissing the complaint.

Dated this 14th day of November, 1974.

/s/ WILLIAM H. WEBSTER
Judge, U. S. Circuit Court

/s/ JOHN K. REGAN
Judge, U. S. District Court

/s/ H. KENNETH WANGELIN
Judge, U. S. District Court

A True Copy of the Original

Filed Nov. 14, 1974
Attest: WILLIAM D. RUND, *Clerk*

By: MURLEM A. SHAYER
Deputy Clerk

Dated: Nov. 18, 1974
St. Louis, Missouri

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1815

JAMES C. GABRIEL, *Pro Se*, A Class B Equity Bearing Common Stockholder in the Missouri Pacific Railroad Company, for himself,

Plaintiff-Appellant, Pro Se,

—v.—

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,

Defendants-Appellees,

—and—

MISSOURI PACIFIC RAILROAD COMPANY,

Intervening Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY
(THREE JUDGE COURT)

PLAINTIFF-APPELLANT'S REPLY BRIEF TO DEFENDANTS-APPELLEES' AND INTERVENING DEFENDANT-APPELLEE'S MOTIONS TO DISMISS PLAINTIFF-APPELLANT'S JURISDICTIONAL STATEMENT

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PLAINTIFF-APPELLANT'S REPLY BRIEF TO DEFENDANTS-APPELLEES' AND INTERVENING DEFENDANT-APPELLEE'S MOTIONS TO DISMISS PLAINTIFF-APPELLANT'S JURISDICTIONAL STATEMENT

The action in which the order was entered was not brought by me to set aside an order of the Interstate Commerce Commission for the issuance of new securities by the

Missouri Pacific Railroad as part of a plan of recapitalization. I have at all times been asking the Honorable Courts for a due process of the evaluation of my Class B equity bearing Common stocks according to the MoPac I.C.C. "Agreed Systems Plans of Reorganization or Charter of 1954-1955, 290 I.C.C. 477, in order to find my Class B real true value in a fair exchange of my Class B for new shares of the recapitalized MoPac Company on a value for value basis so that I would receive the equivalent value for my Class B shares as the values I surrendered. That is my Constitutional right and my Civil Right. It is also according to my rights under the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955, or Charter, 290 I.C.C. 477, a law of the United States which must be enforced.

The Division 3 of the Commission had approved in their Order of December 6, 1973, Finance Docket #27346 pursuant to Section 20a of the Act, authority granting to MoPac the issuance of new shares in exchange for the Class B equity bearing MoPac Common shares at a value of $2,450 per Class B as "fair value" instead of a due process of law evaluation of Class B of over $22,500 per share, as part of the "Plan of Recapitalization," converting the Class A $5 preferred $100 value stocks into new equity bearing Common without first having a due process of law evaluation of Class B to find Class B real true value. This unconstitutional action by the I.C.C. has helped deprive me out of over $20,000 per each Class B shares that I own. The Class B stockholders as a whole were deprived out of over $615 million and the I.R.S. stands to lose over $100 million in taxes because the I.C.C. will not evaluate my Class B shares under due process of law, 290 I.C.C. 477.

The I.C.C. says I am a dissatisfied member of a class action suit brought by holders of Class B MoPac stock.

The I.C.C. says that this plan of recapitalization constituted the settlement of a class action brought by holders of Class B MoPac stock. But this so-called "plan of recapitalization" is a scheme by Mississippi River Corporation to help take over my Class B equity bearing shares, and other Class B shareholders' stocks by the use of Section 20a of the I.C.C. Division 3—with no due process—at Mississippi's price of $2,450 value per share, whereas Class B has a due process of law value of over $22,500 per Class B, and at the same time under 20a Mississippi River Corporation converts all of her 62% holdings of her $5 Class A preferred $100 value shares into new MoPac Common equity bearing stocks at the ratio or 1 to 24½ instead of the true value of 1 to 225 in favor of Class B. This is almost one tenth of what Class B shares should get in a "Plan of Recapitalization." I am not a member of a class of stockholders that brought about a class action suit on a plan of recapitalization. I voted against the MoPac "Plan of Recapitalization" on the June 15, 1973 Special stockholders meeting in Saint Louis. I never was a member of a class action suit on better dividends. This class action on dividends on Honorable Frederick vanPelt Bryan's order of October 9, 1968, was convoluted into a "Plan of Recapitalization" in 1972 on the same pleadings on dividends. How unjust. All I have asked for at all times is for a due process for my Class B.

On January 27, 1976 I moved to join the Internal Revenue Service under Rule 19.

On March 17, 1976, the Court entered an unsigned order denying my motion. The purpose of the Joinder was to enable the I.R.S., which has the respect of the Federal Courts, to use its law expertise and its command of respect, to help get a court order, ordering the I.C.C. to evaluate my Class B equity bearing common shares under due process of law, according to the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955 or MoPac Charter, 290 I.C.C. 477, a law of the United States that must be enforced, to find my Class B real true value which is about $22,500 per share or about $894 million for the 39,731 shares of Class B, made up of $349 million Retained Income and $545 million in property values belonging to Class B, as of 12/31/72. On the other hand, the I.C.C., without due process, said that $2,450 per Class B was "FAIR VALUE," or a total of only $97 million. This means that over $615 million Class B values were transferred to the Class A $5 preferred $100 value stocks without payment of any taxes. This means over $100 million in Capital Gains taxes owed by the Class A $5 preferred to the I.R.S. 62% of Class A is owned by Mississippi, and so Mississippi owes the I.R.S. approximately $62 million capital gains taxes for the transfer to her Class A about $400 million values.

The Interstate Commerce Commission and MoPac say that my appeal should be dismissed for want of jurisdiction. But my appeal has jurisdiction entered by the three-judge court because this order is governed by 28 U.S.C. 1253 and appellant is appealing the denial of his motion by the three-judge court to join the I.R.S. as a party with him under Rule 19. This MoPac case has the Interstate Commerce Commission and the United States of America

as a party, with appellant seeking to remand this MoPac case to the I.C.C., which requires that a direct appeal must be taken to the Supreme Court of the United States in order to get a remand to the I.C.C., and have a due process of law evaluation by the I.C.C. of my Class B equity bearing Common Shares according to the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955 or MoPac Charter, 290 I.C.C. 477, a law of the United States that must be enforced. Only in this way will appellant get the real true value of his Class B common shares.

The I.C.C. did not evaluate Class B under due process of law. This is unconstitutional especially against the 5th Amendment. Only the Supreme Court of the United States has jurisdiction to join the I.R.S. into this MoPac case under Rule 19. In addition, the I.R.S. must enforce the 16th Amendment because in this instant MoPac case over $600 million values have been transferred without payment of any taxes. The Internal Revenue Service has the law expertise and the respect of the Federal Courts to help win a Federal Court Order, ordering the I.C.C. to evaluate the Class B Common under due process of law, which will give my Class B Common its true real higher value, on which "higher value the I.R.S. will become enabled to collect over $100 million in capital gains taxes, $62 million to be paid to the I.R.S. by Mississippi River Corporation, the architect of this "Plan of Recapitalization" scheme to take over other people's Class B MoPac Common stock properties without due process of law evaluation of their stocks to get their real true values, and without the payment of any capital gains taxes to the I.R.S. for the transfer of

over $400 million values from the Class B to Class A $5 preferred, 62% owned by Mississippi River Corporation.

Additional reasons why this appeal has jurisdiction to get the I.R.S. into this case under Rule 19. The Constitution of the U. S. is involved.

(1) Article 1, Section 10—states as follows:

"No State shall pass • • • any bill of attainder, ex post facto law, or law impairing the obligation of contracts • • • ."

The "Plan of Recapitalization" under Section 20a of the Act is being used by the I.C.C., MoPac, Mississippi River Corporation, and the Federal Courts to impair the obligation of the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955, or MoPac Charter, 290 I.C.C. 477, which is a contract for the Missouri Pacific Railroad stocks and bonds. This contract gives the Class A $5 pfd. a value of $100 per share, $5 dividends per share per year. The Class B equity shares are made the "residuary beneficiary" of the MoPac properties, which as of December 31, 1972 amounted to $349 million in Retained Income and $545 million in property values, which have more than tripled in value since 1955, or about $894 million total, or over $22,500 per Class B (see pages 19 and 21 MoPac 1972 Annual Report).

(2) The Fifth Amendment due process of law evaluation, which the I.C.C. so far has not followed for Class B.

(3) The 14th Amendment—"Equal protection of the law." I as a small Class B stockholder am not getting equal

protection of the law; the lower Federal Courts are not paying any attention to me and my constitutional and civil rights, but MoPac, Mississippi and Alleghany are getting more than full cooperation by the Federal Courts and agencies.

The Interstate Commerce Commission says that my appeal is untimely. That is not true. My Notice of Appeal to the Supreme Court of the United States is timely. The three-judge court entered its order denying my motion and affidavit to join the I.R.S. under Rule 19 Joinder of Persons Needed for Just Adjudication as a party with plaintiff on March 17, 1976, but the Court clerk mailed me a copy of the Order minus the signatures of the Honorable three judges in the Three-Judge Court.

I made my Notice of Appeal to the Supreme Court of the United States and filed it in the Court Clerk's office in Trenton, N.J. on March 22, 1976 by making it in the following manner:

I made a Motion and Affidavit and had it notorized on March 20, 1976 and filed it in the District Court clerk's office on March 22, 1976 and worded it as follows:

(1) "This is my Notice of Appeal to the United States Supreme Court after I have received a signed original filed copy signed by Honorable Hunter III, U.S. Circuit Judge; Honorable Lawrence A. Whipple, Chief, U.S. District Judge; and Honorable Clarkson S. Fisher, U.S. District Judge, of the Civil Action Order, Civil Action #74-471, *James C. Gabriel, Pro Se, Plaintiff* v. *United States of America and Interstate Commerce Commission, Defendants, Missouri Pacific Railroad Company, Intervening Defendant,* denying my Motion to Join the Internal Revenue Service under Rule 19 into this MoPac case to help the I.R.S. collect $100 million in taxes."

(2) I waited some time for the Court to mail me a signed filed copy by the Honorable Three-Judge Court making their order of denial official so that I could make my Notice of Appeal to the Supreme Court of the United States official.

(3) On April 22, 1976, I personally went to Trenton, N. J. and filed with the Clerk of the District Court a sworn affidavit, again requesting the Three Honorable Judges signatures on their order denying my motion to join the I.R.S.

(4) I took a copy of my filed affidavit to Hon. Judge Fisher's chambers. His secretary telephoned the Clerk's office and was told by a deputy clerk that they had a signed copy by the 3 judges of the denial of my Rule 19 Joinder of the I.R.S. with my MoPac case. I went into the Clerk's office and bought one zeroxed copy for 50 cents and I got a receipt for this 50¢ dated April 22, 1976. I immediately made an official second Notice of Appeal to the Supreme Court of the United States which I filed the following day April 23, 1976 at the Clerk's office, one original and seven copies, all to the Clerk of the District Court.

(5) In addition to having done all of the above, I found out at the University law library that 60 days are the Rule on this MoPac case, according to Rule 4(a), Appeals in Civil Cases, Appeal as of Right when taken, because the United States or an official or an agency is a party in the case, such as in the present MoPac case where the Interstate Commerce Commission and the United States of America are defendants in this case, and I am trying to get the I.R.S. into this case under Rule 19 in order to remand the case to the I.C.C. to get my Class B equity bearing common stocks evaluated under due process of law, 290 I.C.C. 477.

(6) In addition to all of the above, the fact that I made a motion and affidavit and filed it with the Clerk of the District Court on March 22, 1976 asking the Honorable District Court to have the Three Honorable Judges of the three-judge court sign their Order entered on March 17, 1976 denying my motion and affidavit to join the I.R.S. under Rule 19 Joinder of Persons Needed for Just Adjustment as a party with Plaintiff temporarily suspended the 30 day period after the entry of the Order of the Court on March 17, 1976, so that the time for Notice of Appeal to the Supreme Court of the United States was extended by my motion and affidavit of March 22, 1976 to a longer period than the 30 day period that was supposed to expire on April 16, 1976, so that my Notice of Appeal to the Supreme Court on April 23, 1976 after I had received the signatures of the three Honorable Judges on April 22, 1976, a day before, denying my Notice of Motion to Require Joinder of the Internal Revenue Service under Rule 19 was timely.

(7) The fact remains that my Jurisdictional Statement to the Supreme Court to get the Joinder of the Internal Revenue Service under Rule 19 was stamped and received in the Supreme Court of the United States on June 15, 1976 exactly 90 days from the filing date of the 17th of March, 1976 when my motion to join the I.R.S. as a party plaintiff was denied by the three judge court. It cannot be said that I failed to file a Notice of Appeal to the Supreme Court on time. My motion and sworn affidavit filed with the Clerk of the Court on the 22nd of March will prove that my filing of my Notice of Appeal was timely.

CONCLUSION

It is therefore respectfully submitted that my appeal to this Honorable Supreme Court of the United States should not be dismissed for the above reasons in the interest and cause of justice.

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Reply to Motion by Intervening Defendant

This is my Reply to the Motion by Intervening Defendant-Appellee Missouri Pacific Railroad Company to Dismiss or Affirm my appeal to the Supreme Court of the United States under Rule 19 into my MoPac case.

The questions and answers are about the same as those posed by the Interstate Commerce Commission. Please refer to that part of my Reply Brief that pertains to the I.C.C. for additional information that MoPac seeks.

Answer to MoPac's Questions

This action has been brought by Plaintiff not to set aside an Order of the I.C.C. made on December 6, 1973, on Finance Docket #27346, on a "Plan of Recapitalization" under 49 U.S.C., Section 20a, but to get a due process of law evaluation of Plaintiff's Class B equity bearing Common stocks, according to the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955, or MoPac Charter, 290 I.C.C. 477, to get the real true value of my Class B Common shares which is about $22,500 per Class B and not the $2,450 per share decided by the I.C.C. Division 3, of Commissioners Tuggle, Deason, and MacFarland as "FAIR VALUE," without the I.C.C. first evaluating my Class B under due process of law according to 290 I.C.C. 477 or MoPac Charter 1954-1955, which is a law of the United States and must be enforced.

That order by the Three Judge District Court was affirmed by judgment of May 6, 1976. Motion was made for Reconsideration under Rule 12 I of Rules of the District

Court on May 20, 1976, which was denied by Judgment. A Notice of Appeal was made to the Supreme Court of the United States from that Judgment before the time to appeal had expired. It is going to the Supreme Court in September, God willing.

Appellant is not a member or a party of a class action of Recapitalization or Judge Weinfeld's opinion which approved the so-called "Plan of Recapitalization." Appellant never appointed anyone to represent him in any class action. Appellant voted all his Class B shares against the "Plan of Recapitalization" on June 15, 1973 at the Special MoPac Stockholders Meeting in Saint Louis. All Plaintiff wanted and wants at all times is a due process of law evaluation of his Class B equity bearing Common shares, according to the MoPac I.C.C. "Agreed System Plan" of Reorganization, 1954-1955, or Charter 290 I.C.C. 477, to get the real true value of his Class B, to exchange these B shares into the new Common shares of the Recapitalized MoPac Company.

Plaintiff has a Constitutional right to get the Internal Revenue Service into the MoPac case in order to enable the I.R.S. to use its law expertise to help win a Federal Court Decision to remand this MoPac case back to the I.C.C. to have the I.C.C. evaluate his Class B shares under due process of law, according to 290 I.C.C. 477. This would make it possible for the I.R.S. to collect capital gains taxes that can only be gotten through a due process of law evaluation of Class B which gives Class B its real true higher value, almost 10 times more than the $2,450 value per Class B, or $22,500 per Class B.

MoPac is wasting its time if it thinks that suggesting that there is a reward for informing the I.R.S. of taxes due from Mississippi River Corporation on this "Plan of Recapitalization," unless there is first a due process of law evaluation of my Class B to find Class B higher values on which the I.R.S. capital gains depend upon. That is the reason why I have been fighting in the Federal Courts all of this time. MoPac and Mississippi are playing coy by their suggestions. They are trying to divert attention elsewhere from the real objective, because they don't want to be hurt financially for over $62 million in capital gains taxes, plus many other costs. That is why they are fighting me from getting my stocks evaluated under due process. I have a Constitutional right for a due process according to Article 1, Sections 9 & 10, 5th Amendment, and 14th Amendment.

I am asking the District Court to require the I.R.S. to become a party to this action in order that the I.R.S. use its law expertise to get a Federal Court Order, ordering the I.C.C. to evaluate my Class B equity shares according to the MoPac I.C.C. "Agreed System Plan" of Recapitalization of 1954-1955 or Charter, 290 I.C.C. 477, to get my Class B shares real true value in a fair exchange for the new MoPac Company. Based upon this MoPac true value, the I.R.S. will be entitled to over $100 million in capital gains taxes that MoPac and Mississippi tried to avoid paying by using Section 20a of the Act to have their way on Class B values. A due process of law evaluation of Class B would have cost MoPac and Mississippi a great deal of money which they could not afford to pay under those terms.

CONCLUSION

For reasons stated herein it is respectfully submitted that the appeal should not be dismissed in the interest and cause of justice.

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Certificate of Service

I, JAMES C. GABRIEL, *Pro Se,* Plaintiff-Appellant, do hereby certify that 3 copies of the above and foregoing Plaintiff-Appellant's Reply Brief have been deposited in the United States Mail, postage prepaid, on the 26th day of August, 1976, to the following addressees:

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